THE LAW AND PRACTICE RESPECTING THE REGISTRATION OF DEEDS IN THE COUNTY OF MIDDLESEX UNDER THE MIDDLESEX DEEDS ACTS.

BY

CHARLES FORTESCUE-FRICKDALE, B.A.,

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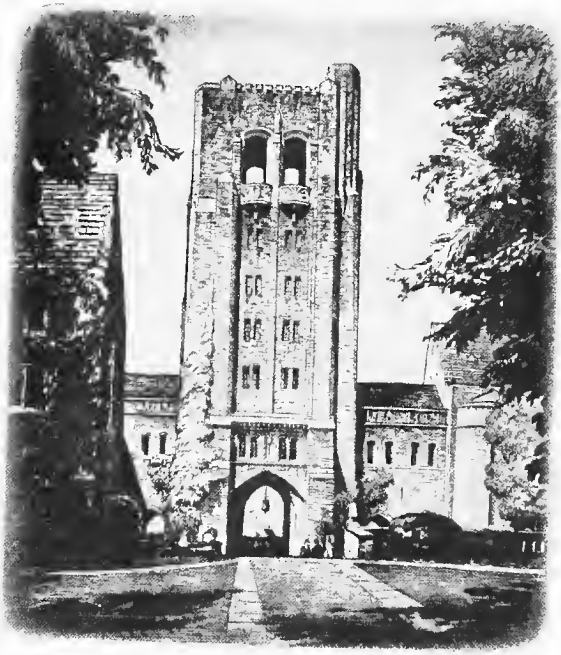

THE

LAW AND PRACTICE

RESPECTING THE

REGISTRATION OF DEEDS

IN THE

COUNTY OF MIDDLESEX

UNDER

THE MIDDLESEX DEEDS ACTS,

CONTAINING

GENERAL INSTRUCTIONS AS TO PROCEDURE ON ALL DEALINGS WITH LAND IN MIDDLESEX,

ALSO THE

ACTS AND RULES, WITH NOTES CONTAINING THE LAW AS TO VALIDITY AND PRIORITY OF MEMORIALS, FEE ORDER, OFFICIAL REGULATIONS, FORMS, AND PRECEDENTS.

BY

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LONDON WALL.

PREFACE.

THE Land Registry (Middlesex Deeds) Act, 1891, and the Land Registry (Middlesex Deeds) Rules, 1892, and Fee Order of the 8th of February, 1892, introduce such great changes into the working of the Middlesex Registry Act, 1708, that no apology is needed for the appearance of this book.

The scheme of the work is to mention all particulars requiring special attention in dealings with land in the County, from the Contract and Conditions of Sale up to the Completion of Registration, the ordinary law and practice being assumed to be known.

Where reference is made to decisions on the Yorkshire or Irish Acts, it may be assumed that the Statutes are substantially identical, unless otherwise stated.

The aim of the work being merely to furnish a practical statement of the existing law and practice, all discussion respecting the general policy of the Act, and the decisions which have followed it, has been studiously avoided. The recent changes are also stated without comment.

C. FORTESCUE-BRICKDALE.

8, New Square, Lincoln's Inn,
April, 1892.

By the same Author.

THE PRACTICE OF THE LAND REGISTRY UNDER THE TRANSFER OF LAND ACT, 1862, with such portions of the Rules as are now in force, and General Instructions, Notes, Forms, and Precedents.

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SUMMARY

OF THE

PRINCIPAL CHANGES IN PRACTICE IN THE REGISTRY,

Effected by the Act of 1891 *and Rules of* 1892.

---

1. MEMORIALS ARE TO BE WRITTEN ON PAPER of a prescribed size and quality (p. 37, 44) instead of on vellum or parchment, and are to follow, as far as possible, a PRESCRIBED FORM (p. 50). These will be filed in the office and bound without any copying (p. 40).
2. Memorials NEED NOT BE SEALED, signature is sufficient (p. 45).
3. Only ONE WITNESS need attest a memorial (p. 37, 38), and where the witnesses to the original instruments are not available, other persons may attest the memorial (p. 46).
4. The OATH IS ABOLISHED except for certificates of satisfaction of mortgages (p. 45).
5. A FIXED FEE of 5/- is charged for Registration irrespective of the length of the memorial (p. 51).
6. Registration of JUDGMENTS is ABOLISHED (p. 35, 36).
7. Noting SATISFACTION OF MORTGAGES is restricted (p. 35).
8. A SEARCH is DEFINED (p. 47) : and the fee will be 2/- in all cases (p. 51).
9. The "PARLIAMENTARY" INDEX is WITHDRAWN as to the period covered by the "Lexicographical" Index (p. 47).

10. OFFICIAL SEARCHES, in the modern sense of negative searches, will be made, and Certificates issued of the result (p. 41, 47, 48, 49).

11. All FEES are to be paid in STAMPS, which will be obtainable at the office (p. 44, 47, 48, 50, 52).

12. In lieu of registration of a memorial, the land affected may be registered with a Possessory Title under the LAND TRANSFER ACT 1875, (p. 41, 49).

13. In the course of the long vacation (1892) probably, the Registry will be REMOVED from Great James Street, Bedford Row, to 33 LINCOLN'S INN FIELDS.

14. OFFICE HOURS will be—For registrations, 11 to 3; for all other business, 10 to 4—Saturdays, registrations 11 to 2 ; other business, 10 to 2. (p. 53).

THE

LAW AND PRACTICE

OF THE

REGISTRATION OF DEEDS

IN THE

COUNTY OF MIDDLESEX

UNDER

THE MIDDLESEX DEEDS ACTS.

GENERAL INSTRUCTIONS

AS TO THE

MODE OF CONDUCTING DEALINGS WITH LAND IN MIDDLESEX, AND THE PRACTICE OF THE REGISTRY.

Conditions of Sale.

A GENERAL condition precluding objections in respect of registrations (*see* Form 10) seems unobjectionable in all cases, and might sometimes be found unexpectedly useful. If it appears that some of the instruments are not registered, the vendor will consider whether (1) to register, or (2) to omit the final phrase in Form 10 (which will be effectual, even though registration be impossible, and vendor knew of it*) or (3) to insert a condition offering to register (*see* Form 11), or otherwise as he may think best. General conditions of this kind, if not required, are depreciatory, and should not be used except where wanted. Registered instruments, and each separate indorsed instrument, should bear the official memorandum of registration, which is evidence [Act of 1708, sec. 6,

* *Girling* v. *Girling*, W.N. (1886) 13 (Chitty, J.).

and of 1891, sch. 1, para. (7)]. The memorandum, till the middle of August, 1891, was endorsed by hand as follows: "A Memorial registered at eleven in the forenoon, the 21st of April, 1891, B. 11, No. 583," or, on an endorsed deed: "A Memorial of the endorsed deed dated the 10th April, 1891, registered at, &c.," and was signed by the deputy-registrar. Since that time a stamp has been used, containing these words "Middlesex Registry—Registered—15th August, 1891, B. 23, No. 541," and the registrar's signature (under Rule 2 of 1891), was affixed by signing or stamping. After 1st April, 1891, it will be "Land Registry. Middlesex Deeds Department. Memorial registered 10th May, 1892, B. 6. No. 430," with the Registrar's signature following: the whole being usually affixed by a stamp (under Rule 17 of 1892). There is a slight variation for indorsed deeds.

The Abstract.

The abstract should contain the memoranda of registration at the end of each deed, and certificates of official searches (if any). The references to year, book, and number, as abstracted, should be carefully verified, in examining the deeds, otherwise unnecessary difficulties will arise when the searches are made. Unless precluded by the contract the purchaser can require all instruments to be duly registered at the vendor's expense. As to unregistered wills, *see* note to sec. 8 of the Act of 1708. Where a vendor undertook that he had a good title at the date of the contract, several deeds were not registered at the time fixed for completion. *Held*, this did not discharge the purchaser, as it could be remedied at any time before actual completion. *Stowell* v. *Robinson* (3 Bing N.C. 928, Tindal, C. J., 1837).

Numerous cases (cited below, pp. 17 to 19), shew that the mere fact of the entry of a memorial on the register is no proof that it is validly registered, and, in strictness, it would seem to be the duty of the purchaser's solicitor to see that the formalities prescribed by the Act had been complied with in

all memorials affecting the title. But in practice this is rarely, if ever, done; reliance being placed on the official examination of the memorial, which in the interest of the public is made somewhat stringent. It appears, from a case under the old Annuity Act, that a solicitor is not liable for passing an irregularity in a memorial not generally known to be an irregularity at the time the examination is made. *Baikie* v. *Chandless*, 3 Camp. 17 (Ellenborough, C.J. 1811).

Searches.

As to Searches generally.—That a great diversity of practice with regard to searches on dealings prevails is sufficiently shewn by the fact that only 13,000 searches are made annually (1890) as compared with 35,000 registrations. At the same time, authorities are unanimous* as to the duty and necessity of searching, at least on all dealings for value; and, except where an inordinate number of entries is expected (as in the case of a builder, a land company, or the owner of a large building estate), there seems very little reason for omitting so simple a precaution.

It is true that a search carelessly made may fail to discover a deed, and that if this be so, the purchaser may be in a worse position than if the register had not been searched—for a search in the register fixes the person on whose behalf it is made with notice of all deeds registered in the period searched (*see* cases at p. 24)—whether actually found or not, whether reported to the solicitor or not, whether mentioned by him to his client or not. *Procter* v. *Cooper*, 2 Dr. 1 (Kindersley, V.C. 1853). This rule does not apply to official searches. *See* Rule 14 of 1892.

This risk of Constructive Notice is sometimes given as a reason for the omission to search at all, but if proper care be used, or if, under the new rules, an official search be applied for (*see* p. 49), this danger can be quite avoided.

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* Elph. xxvii, 4, 131, 162; Dart, 566; Prid. vol. I., p. 153; B. & J vol. I., p. 98 Sweet, 295; Sug. 546, 547; W. & B., 177.

The proper extent of a search is said to be the whole abstract, but in practice it is not usual to go behind the last dealing for value with the entire interest, unless there is reason to suppose that proper searches were not then made.

Not only the actual conveying parties, but all persons appearing to have had power to create interests or to vest estates or powers, should be searched against for the periods within which the registration of an instrument exercising such power would defeat the title. For instance, tenant for life as well as trustees of a settlement, also donee of a power to appoint new trustees by whose declaration the estate may vest; the heir of a deceased owner, and the deceased himself. Where a marital right attaches a search against the husband seems also necessary. Dower and curtesy estates should not be forgotten. Each search should commence with the date of the vesting of the estate or power, and should be continued to the date of the *registration* of some instrument which makes the title safe. Where the title is through a will or intestacy, search (for subsequent wills or impediments to registration of wills) should be made in the name of the deceased for four years after the death. (*See* secs. 8 and 9 of the Act of 1708). Searches should be made as early in the proceedings as possible, and the vendor is liable for their cost if the purchase goes off on the ground of title.* The Registry is very crowded about quarter days, but if the bulk of the searching were done early in the proceedings, leaving only a supplemental search before completion, the inconvenience would not be much felt.

How to make a Search.—The general index is first searched. Each year (at present, April, 1892) is separately bound. The names of grantors form the basis, and up to the present they are grouped according to surname only, without regard to Christian names, so that each surname must be looked entirely through. Double names should be searched under both names, to save risk of error. Various spellings and changes of names should also be considered. The index gives the parish if

* *Hodges* v. *Earl of Litchfield*, 1 Scott 443 (Tindal C. J., 1835).

definitely mentioned in the memorial; a blank in the parish column indicates a general description in the memorial, and should be enquired into. A list of the references found in the index against the name and parish should be made, and compared with the references noted in the abstract, and, if any are found not there noted the files of memorials (or copies) should be referred to. It is not usual to refer to the originals where the copies are available, except in cases of doubt. If, on reading the parcels of any memorial, it appears to affect the property, the vendor must be asked to explain it.

Searches can be made at all hours in which the office is open to the public, namely 10 to 4 usually, Saturdays 10 to 2. The office hours will probably be shortened in the vacations also.

Impracticable Searches.—Owing to the want of some system of map indexing, the entries against even one name and parish are sometimes so numerous as to render a complete search impracticable. In such cases it is advisable for a solicitor to obtain a written indemnity from his client. This will be the easier to obtain now that the official search system enables a considerable portion of the cost of heavy searches to be charged as out-of-pocket expenses in cases where the "scale" applies. Apart from this, the client apparently has no particular inducement to forego his rights. The indemnity should set out the risk of not searching, the expense of searching, and any other material considerations that may occur in the case. It might be wise in all cases of dealings in Middlesex to agree beforehand, under sec. 8 of the Solicitors Remuneration Act, 1881, that work done in the Middlesex Registry shall be charged for in addition to the "scale" fee.

Official Searches.—See Rules 10 to 14 of 1892, and notes thereto.

It will be seen that the official search relieves the purchaser from searching the index. It supplies him with a list of all references found against the names. If these correspond with the references given in the abstract (as in most cases they will) nothing more need be done. If any other references occur, the Registry must be visited and the memorials looked up.

The official search also furnishes a record of the extent to which a search has been carried, which may be useful to avoid notice (as in a Yorkshire case, *Hodgson* v. *Dean*, 2 Sim. and S. 221, Leach, V.C. 1825).

It is conceived that it will always be proper to apply for an official search, as it already is in Yorkshire. (Elph. 144, Prid. vol. I., p. 153.)

The Conveyance

will be in the usual form.

The Memorial

should be prepared and executed at the same time as the conveyance.

See paras. 1 to 5, and 9, of Sch. 1 to the Act of 1891, Rules 2 to 6 of 1892, Fee Order of 1892, and Forms 1 to 3, and 12 to 15, and notes thereto.

General Form and Contents.—Memorials should be confined, if possible, to the bare requirements of the Act and Rules.

It was formerly the custom to make the memorial almost an abstract of the deed, under the idea of preserving secondary evidence of title. But this is not the object of the Act; it has the effect of exposing titles in an undesirable manner, and it adds somewhat to the trouble of examination in the Registry, and to the risk of rejection of the memorial as incorrect. *See* also Rule 18 of 1892, and note (*b.*) p. 13.

If parties are scheduled (as in creditors' deeds) they may be scheduled in the memorial, but on no account omitted.

Description of Lands.—This is the only part of the memorial likely to cause any difficulty. Ordinary parcels should be copied verbatim, including references to schedules and plans, followed by the schedules and plans (as to plans *see* Rule 4, p. 45), and also including any easements and rights of sporting or otherwise over neighbouring lands, and all other appurtenances mentioned in the deed. It is not necessary to mention rights to mines and minerals under the land, even if mentioned in the

deed. Exceptions should be mentioned, even when expressed in general terms, as in recitals 2 and 3 to Form 15.

Forms 12 to 15 shew various modes of dealing with indorsed annexed, or supplemental deeds, parcels by reference to recitals, &c.

Memorials of Wills.—Wills vary so greatly in form and completeness, that only very general advice can be given as to the memorial. It should not give any other description of the land than that contained in the will, however vague that may be. Codicils should be mentioned if they alter the devise in any way. An executor, as such, does not seem to be a "devisee," so he cannot sign the memorial unless otherwise entitled. Trust and mortgage estates should, if mentioned in the will, also be mentioned in the memorial, even where the testator died after 1881, for it might be held that they are lands "affected" by the will within the meaning of para. 5 of the First Schedule of the Act of 1891, and *see* p. 39.

Change of Name.—Sometimes a long period may elapse between execution and registration, in the course of which the name of a grantor, or the parish boundary, may have been altered. An American case (*Astor* v. *Wells*, 4 Wheaton's Sup. Ct. Rep. 466, 1819), points to the *new* name as the proper one in which to register; on the ground that persons would search in the new name back to the time of the change. On the other hand, such registration would be a departure from the words of the Act of 1891, Sch. 1, para. 5, and Rule 3 of 1892. Possibly it would be safest to mention *both* names in the particulars for the index, adding an explanatory word or two at the end of the memorial.

Execution of Memorials.—See the Act of 1891, Sch. 1, paras. 2, 3, and Rules (of 1892) 5, 6.

Errors in Original Instrument.—If the document to be registered be erroneous, inaccurate, or incomplete, in any of the prescribed particulars (as is often the case with wills), no attempt to remedy the defect should be inserted in the body of the memorial, even though evidence in support be pro-

ducible, for "the registrar has no authority to try by affidavit or otherwise whether a different manner of expressing the lands [or apparently anything else] from that contained in the deed is justified." (Patteson, J., 15 Q.B. 984.) It would be unobjectionable, however, in suitable cases (especially if the error would affect the index) to insert a note at the end, stating and rectifying the error, inaccuracy, or omission, in question.

Inland Revenue Stamps.—The duty on memorials generally is regulated by the stamp Act, 1891.—Schedule of Duties "Memorial," the wording of which is not perfectly clear, but it is understood to mean that where the original deed, &c., pays no duty, or a less duty than 2s. 6d., the memorial should pay, respectively, no duty, or the same duty as the original. In all other cases the memorial pays 2s. 6d.

The duty is payable in Inland Revenue impressed stamp, and the 5s. fee for registration should be impressed at the same time. *See* p. 52.

Memorials of Wills and Devises need bear no Inland Revenue Stamp at all, the Registration of Wills not being within the purview of the words in the Schedule of Duties.

The statutory exemptions are numerous, and are alphabetically stated in the appendix to Bond, pp. 44 to 55.

The chief exemptions which apply to memorials are:—

The Bankruptcy Act, 1883, sec. 144.

The Church Building Act—3 Geo. IV. cap. 72, sec. 28—incorporated in numerous later Acts.

The Consecration of Churchyards Act, 1867, sec. 6.

The Drainage Act—9 & 10 Vic. cap. 101, sec. 47.

The Parochial Clergy Residences Acts—17 Geo. III. cap. 53, sec. 15, incorporated into later Acts.

Crown Lands in certain cases: 10 Geo. IV. cap. 50, sec. 77, continued by 14 & 15 Vic. cap. 42, sec. 2, and extended by the Crown Lands Act, 1866, sec. 10; but *see* also Stamp Act, 1891, sec. 119.

Memorials as Secondary Evidence.—A memorial signed by *A.* is good secondary evidence of the deed against *A.*, and those claiming under him, *Wollaston* v. *Hakewill*, 3 Man. and G. 297. (Tindal, C. J. and Ct. 1841), or against any person registering—who may be presumed to be the parties to the deed—and those claiming under them. An examined copy may be used. *Doe d. Loscombe* v. *Clifford*, 2 Car. and Kir. 448 (Alderson, B. 1847). Also, it would seem, a copy of a memorial, even if made from the book into which the memorials (prior to 1st April, 1892), are copied, will suffice, it being presumed that the officers do their duty of copying correctly. But it is the practice to make copies from the originals only. *Baikie* v. *Chandless*, 3 Camp. 17 (Ellenborough, C.J. 1811). In Ireland it has been held that a memorial, though not executed by the grantor, may be good secondary evidence of the execution and contents of a lost deed against purchasers claiming under him. *Scully* v. *Scully*, 10 Ir. Eq. Rep. 522; *Biggs* v. *Sadleir*, *ibid* p. 557.

Registration.

As priority may be gained or lost by very trifling differences in the order of registration,* all instruments should be registered as soon after execution as possible. The risk incurred by delay is not only fraud by the vendor, but the registration of prior incumbrances unknown perhaps to the vendor himself. (*See* pp. 25, 26). Hours for registration will be usually 11 to 3, Saturdays 11 to 2. The fees payable are at p. 51.

A receipt to be signed by an officer of the Registry should also be prepared by the applicant, giving the dates and (short) parties to the documents left, and should be handed in for signature when the deed is left at the Registry. This receipt must be kept carefully, as it will be required when the deed is returned. Forms are supplied at the office.

In the course of two or three days the memorial is officially compared with the instrument, to see that it complies with the

* *See Neve* v. *Pennell*, 2 H. & M. 171 (P. Wood, V.C. 1863) for an example, stated below, p. 40.

Act sufficiently to make the registration effectual. *See* Rule 7 (p. 46) and notes.

If the deed is required the next day, it can be examined out of its turn for an extra fee of 2s. 6d.: this should be placed on the memorial.

If a memorial is improperly refused by the registrar, the remedy is by mandamus; but if unsuccessful, the applicant will have to pay all costs.*

Rectification of the Register.

The Court, as such, had formerly no power to order a registration to be expunged, even on the ground of fraud, though it was thought possible that the M.R., as keeper of the records, might do so on a proper application being made to him. *Gibbs* v. *Sidney*, W.N. 1883, 148 (North, J.). But it appears also, *re Berdan's Patent*, 20 Eq. 346 (Jessell, M.R., 1875), that such rectifying jurisdiction was of a very limited nature.

Now, apparently, in such a case, the Court would order rectification of the register under sections 95 to 97 of the Land Transfer Act, 1875, which is imported into the Middlesex Registry by sec. 1 of the Act of 1891 (p. 33).

Solicitor's Costs.

The Remuneration Order of 1881 does not appear to make any exception with regard to land in Middlesex, from which it would seem that the *ad valorem* scale, where applicable, includes all attendances and drafting necessitated by the Registry Acts, including attendances for searches, but not, of course, including payments out of pocket. The institution of Official Searches (pp. 47 to 49) modifies the practical effect of this to a certain extent. *See* suggestion at p. 5.

Where the "scale" does not apply, a great diversity of

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* *Reg.* v. *Registrar of Middlesex*, 15 Q.B. 976 (Campbell, C.J. 1850), p. 985.

practice appears to prevail. The items apparently may be charged for somewhat as follows :—

	£	s.	d.
Attending searching at Middlesex Registry against Vendors and Mortgagee, one hour . .	0	10	0
Paid searching three names*	0	6	0
Instructions for Memorial . .	0	6	8
Drawing same, 10 folios	1	0	0
Copy thereof	0	3	4
Engrossing	0	6	8
Attending on same being executed and attesting .	0	10	0
Attending Registrar and registering . .	0	6	8
Paid fee*	0	5	0
Attending and obtaining deed duly registered .	0	6	8
	£4	1	0

These fees are, it appears, much more usually agreed, or charged, at a round figure, varying according to circumstances from three-and-a-half guineas to one guinea, (or even less perhaps) where the matter is very small, or a special arrangement is made with a building society, or the lessees on a large estate. Probably, £2. 2s. 0d. would be found to be the most usual average charge.

It appears from the above details that a longer memorial, say 60 folios, and five more searches, taking up, say, a day-and-a-half, would increase the above costs by ten guineas, or thereabouts.

* New fees, *see* p. 51.

THE MIDDLESEX REGISTRY ACT, 1708.*

7 Anne, Cap. 20.

Act of 1708, Sec. 1.

An Act for the public registering of Deeds, Conveyances, and Wills, and other Incumbrances, which shall be made of or that may affect any Honors, Manors, Lands, Tenements, or Hereditaments within the County of *Middlesex*, after the Twenty-ninth Day of *September* One thousand seven hundred and nine.

Whereas (*a.*) by the different and secret ways of conveying lands, tenements, and hereditaments such as are ill disposed have it in their power to commit frauds, and frequently do so, by means whereof several persons (who through many years industry in their trades and employments, and by great frugality, have been enabled to purchase lands, or to lend monies on land security,) have been undone in their purchases and mortgages by prior and secret conveyances and fraudulent incumbrances, and not only themselves but their whole families thereby utterly ruined: For remedy whereof, may it please your most Excellent Majesty (at the humble request of the justices of the peace, gentlemen, and freeholders of the County of *Middlesex*,) that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that a memorial (*b.*) of all deeds and conveyances (*c.*) which from and after the twenty-ninth day of *September* in the year of our Lord One thousand seven hundred and nine shall be made and executed, and of all wills and devises (*d.*) in writing made or to be made and published, where the devisor

A memorial of conveyances made after 29th Sept. 1709, and of all wills, &c. that may

* Now the authorised short title, *see* p. 33.

or testatrix shall die after the said twenty-ninth day of *September*, of or concerning and whereby any honors, manors, lands, tenements, or hereditaments in the said county (*e.*) may be any way affected in law or equity, may be registered in such manner as is hereinafter directed (*f.*) ; and that every such deed or conveyance that shall at any time after the said twenty-ninth day of *September* be made and executed shall be adjudged fraudulent and void (*g.*) against any subsequent purchaser or mortgagee for valuable consideration, unless such memorial thereof be registered as by this Act is directed (*h.*) before the registering of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim (*i.*) ; and that every such devise by will shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration unless a memorial of such will be registered at such times and in such manner as is hereinafter directed (*j*).

Act of 17 o Sec. 1.

affect any honors, &c., within the County of Middlesex, may be registered: and every conveyance made after such memorial registered shall be void, &c., unless such memorial be registered before the registering of the conveyance under which, &c.

The like of a devise by will.

(*a.*) The correct construction of the preamble and first section of the Act is the key to every question of principle involved in the administration of the system. The following notes are an endeavour to collect and compare the authorities, on the various points that arise on the section, and to offer suggestions where authority is wanting.

(*b.*) The register is not intended to show the contents, or the effect, of deeds ; or to form a repository of secondary evidence of title. Its object is merely to give information of the existence of deeds affecting real property, which may otherwise be suppressed. Sections 5, 6 and 7, which formerly prescribed the form and contents of memorials and paras. 1 to 5 of the 1st Schedule to the Act of 1891, which now prevail, shew clearly that only such particulars as are necessary to identify the deed are intended to be placed on the register.

See also separate note on the memorial (p. 6).

(*c.*) (i.) **Meaning of Conveyance generally:—**

"Conveyance" may be any deed affecting the land—*Hunter* v. *Kennedy*, Ir. Ch. Rep. 148 and 225 (Brady, L.C.Ir., affirming Smith, M.R. 1850).

The Act is a remedial Act, and meant to extend the benefit of registration as far as possible (Romilly, M.R., in *Moore* v. *Culverhouse*, 27 Beav. 639, 1860).

Conveyance may be by writing unsealed—*Neve* v. *Pennell*, 2 H. and M. 171 (Page Wood, V.C. 1863), p. 186.

"There is no magical meaning in the word 'Conveyance', it denotes an instrument which carries from one person to another an interest in land" (Cairns, L.C. in *Credland* v. *Potter*, 10 Ch. App. 8, 1874).

Act of 1708, Sec. 1. "Deeds and Conveyances."

(ii.) **The following have been held to require registration :—**

Deed appointing uses under a Power : *Scrafton* v. *Quincey*, 2 Ves. 413 (Strange, M.R. for L.C. 1752).

Covenant to charge after acquired property, *Gubbins* v. *Gubbins*, 1 Dru. and Walsh, 160 (n), (Lord Manners, L.C.Ir., 1825) quoted with approval by Brady, L.C.Ir., in *Gardiner* v. *Blesinton* (1 Ir. Ch. Rep. 87, 1850). It may be doubted, however, whether this would be followed in England, where registration is only partial, and the words of the section might be confined to vested estates.

Assignment by insolvent (under old Bankruptcy Acts),to official assignee, though required to be recorded in Court ; for it could be produced for registration before recording, or afterwards by leave of the Court, which would be given as a matter of course—*Battersby* v. *Rochfort*, 2 Jo. and Lat. 431 (Sugden, L.C.Ir. 1846).

A contract, whether for mortgage or sale—*Gardiner* v. *Blesinton*, 1 Ir. Ch. Rep. 84, 85 (Brady, L.C.Ir. 1850).*

Letter from mortgagor to the solicitors holding title deeds for first mortgagee, requesting them to hold them as security for certain persons, as second mortgagees—*Moore* v. *Culverhouse*, 27 Beav. 639 (Lord Romilly, M.R. 1860, overruling his own decision in *Wright* v. *Stanfield*, 27 Beav. 8—*per* Malins, V.C., *re Wight's Mortgage Trust*, 16 Eq. 41).

Mortgage of a building agreement, before houses built or leases granted—*Neve* v. *Pennell*, 2 Hem. and M. 171, (Page Wood, V.C. 1863).

Agreement to mortgage—*Re Wight's Mortgage Trust*, 16 Eq. 41 (Malins, V.C. 1873).

Letter accompanying deposit of deeds relating to Estate A, but including a reference to Estate B, which was already charged by parol and deposit : held to require registration in respect of *both* Estates—*Copland* v. *Davis*, 5 L. R. H. L. 358, 1872.

A memorandum of further charge given to a registered legal mortgagee, *Credland* v. *Potter*, 10 Ch. App. 8 (1874).

A charging order made under the Labourers' Dwellings Act, 1868, requires registration as if it were a charge by deed made by the absolute owner of the land—sec. 29 of the Act.

A declaration under the Conveyancing Act, 1881, vesting the trust property in new trustees should be registered as though a conveyance by the declarant—sec. 34 of the Act.

A certificate of appointment of a trustee in bankruptcy should be registered as a conveyance—Bankruptcy Act, 1883, sec. 54.

Certificates of appointment of assignees in bankruptcy, and appointments of official managers under the old Bankruptcy Acts and Winding-up Acts required registration (12 and 13 Vic. c. 106, s. 143 and 11 and 12 Vic. c. 45, s. 29), but under the Companies Act, 1862, the appointment of a liquidator does not divest the property of the Company, and does not require registration.

(iii.) **The following have been held not to require registration :**

Equitable deposit of deeds where there is no written memorandum. *Sumpter* v. *Cooper*, 2 B. and Ad. 223 (Tenterden, C.J. 1831).

In this case, *A.* and *B.* made a joint purchase, *A.* lending *B.* his share of the purchase money. It was verbally agreed that *A.'s* solicitor should hold the deeds as security for the loan ; *B.* afterwards became bankrupt, and the assignment to the assignees was duly registered, but held not to

* But it may be observed, *contra*, that the Irish Act is more favourable to equities generally than the Middlesex Act.

prevail over *A.'s* charge, which required no registration. [Qy. whether here the assignees were "purchasers" within the Act? 14 Ch. D. 575. But the main point has been fully established by the following subsequent cases, namely :]—*Copland* v. *Davis*, 5 L.R.H.L. 358 (Lords Hatherley and Chelmsford). *Re Stephens*, Ir. Rep. 10 Eq. 282 (Ormsby, J. 1875.) *Re Burke's Estate*, 9 Irish Law Reports, 25 (C.A. 1881). Notwithstanding *Re McKinney*, Ir. Rep., 6 Eq. 445 (Lynch, J. 1872). But if supplemented by written memorandum, *e.g.* on the occasion of a further deposit of deeds relating to other property, the immunity ceases. *Copland* v. *Davis* as above.

Act of 1708, Sec. 1. "Deeds and Conveyances."

Assignment of legacy charged on land—*Malcolm* v. *Charlesworth*, 1 Keen 63 (Langdale, M.R. 1836). Though the authority of this has been doubted, and is said not to be recognised in Ireland.*

Parol agreement for assignment of lease, acted on, but no assignment made—*Reilly* v. *Garnett*, Ir. Rep. 7 Eq. 1 (C.A. 1872).

Vendor's lien for unpaid purchase money, even where there has been a written contract for sale—*Kettlewell* v. *Watson*, 21 Ch. D. 685 (Fry, J. 1882).

A mortgage of a share of the proceeds of sale of real estate in Middlesex—*Arden* v. *Arden*, 29 Ch. D. 702 (Kay, J. 1885).

Further advances made under a mortgage to secure future advances. *Re O'Byrne*, 15 Ir. L. R. 189, 373 (Flanagan, J., and C.A.Ir., 1885). Though the wording of the Irish Act includes "dispositions."

A receiving order under the Bankruptcy Act, 1883, which does not divest the debtor's property, nor make him a bankrupt,† would not require registration.

It also appears clear that changes of ownership occurring by process of law, as succession on intestacy, dower and curtesy estates, husband's marital right to wife's chattels real, and vesting in Sheriff on execution (though this latter requires registration under the Land Charges Registration and Searches Act, 1888) do not require registration.

Land registered under the Transfer of Land Act, 1862, and the Land Transfer Act, 1875, is exempt from the Middlesex Registry Acts, *see* sections 104 and 127 of those Acts respectively. Instances have been known in which numerous deeds affecting such lands have been registered in Middlesex. Such registration is a useless expense, and cannot even be recommended as a precaution.

See also sec. 18 (17) of this Act (p. 31) for certain further exceptions.

(iv.) The following matters are not expressly determined :—

From a corresponding section, 19 (18), now repealed, with regard to judgments, which expressly excepts judgments entered in the name of Her Majesty, it would seem that this section will operate against the Crown.

But by 16 and 17 Vic. cap. 56, sec. 6, any deed, instrument, or writing to which either of the Commissioners of Woods or of Works is a party, or which is signed by either of them, or which may in any way relate to or affect any part of the hereditary possessions and land revenues of the Crown, or any other hereditaments for the time being under the management or control of the said Commissioners, is, when enrolled in the office of Land Revenue Records and Enrolments, as valid in all respects as if registered in the county register.

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* Dav., vol. II., pt. 2, p. 219, quoted also by Fisher, p. 61, and Coote, p. 91.

† Per Lindley L.J. in *Rhodes* v. *Dawson*, 16 Q.B.D. 553 (1886).

Act of 1708, Sec. 1. "Deeds and Conveyances."

An order of foreclosure absolute was held not even to require registration as a judgment, under sec. 19 (18) of the Act (now repealed).* It would seem, therefore, that orders of foreclosure, vesting orders, orders appointing trustees, &c., would likewise not require registration, as "conveyances." But the point is not free from doubt.

Inclosure awards and orders of exchange, and charging orders of the Board of Agriculture and other public bodies having the effect of vesting estates or binding land under various Acts of Parliament, appear to come under the above-quoted definition in *Credland* v. *Potter*,† and should be registered.

Also conveyances under the Lands Clauses Acts should apparently be registered in the same way as ordinary purchase deeds. The memorial should be so drawn as to ensure the name of the person whose land is affected appearing in the index, wherever possible.

Disclaimers by trustees, possibly, do not require registration, as disclaiming trustees are not grantors, and no estate passes; but indentures of retirement and appointment of new trustees should be registered. Deeds of covenant only affect land by way of notice, and though this may be considered to relieve them from the need of registration, they are more likely to operate if on the register than if kept off it. The same may be said of all deeds containing options of purchase.

New River shares are real property, and all dealings with them should be registered. Debentures are not usually registered, except where trustees are interposed, in which case the trust deed is registered. But it is open to doubt whether they are not within this section in whatever way they are created. This appears the more likely from their being expressly excepted from the Bills of Sale Act, 1882, by sec. 17 thereof.

Beneficial interests under settlements do not seem to be wholly excluded, except where the settlement is by way of trust for sale, as already mentioned. Dealings with these should be registered, at any rate as a precaution. An assignment of a tenant for life's interest will need registration if the assignee desires to retain the protection given him by sec. 52 sub-sec. 3 of the Settled Land Act, 1882.

A Scotch disposition and settlement affecting land in Middlesex appears to be a conveyance within the meaning of this section.

(*d.*) *Wills and Devises.*—It appears to be unnecessary to register a will except in respect of real estate. The language of the Act as to wills in this and subsequent sections uniformly excludes all reference to chattels real, and the memorial must be signed by a "devisee" both under the old and the new regulations (see para. 3 of First Schedule to Act of 1891). Wills of leaseholds can be found in the probate registries.

If the devisee be himself the heir (or if the estate be leasehold) a registered purchaser from him (or from the executor) would, it seems, be safe without registry of the will, and would be entitled to priority over an unregistered purchaser from the deceased.

If a will, produced for registration, contains no words which would include a devise of real estate, it would seem that it should be refused, as no memorial could be executed so as to comply with the Act.

(*e.*) *County.*—The Local Government Act 1888 makes alterations in

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* *Burrows* v. *Holley*, 35 Ch. D. 123 (Chitty, J. 1887).
† 10 Ch. App. 8.

the county boundaries, but by sec. 96 these are of no effect in relation to the Middlesex Registry Acts and documents issued in relation thereto.

Act of 1708, Sec. 1.

See also exceptions under section 18 (17).

The City of London is no part of Middlesex.*

Formalities as to Memorials.

(*f.*) Sections 5, 6 and 7 (now repealed) contain the directions referred to. They are now replaced by paras. 1 to 5 of the First Schedule to the Act of 1891 and Rules 2 to 6 of 1892, *which see* for the various details prescribed, also pp. 6 to 9 "The Memorial."

The question occasionally arises, in what respects may the prescribed mode of recording be infringed without invalidating the registration? On this point the authorities are as follows:—

1. *On Irregularities in Memorials generally.*—The requirements of the Act must be strictly carried out in respect of all matters to be performed by the parties, that is to say in respect of the contents of the memorial, and the persons to execute and attest it. As to these the Act is mandatory. Possibly, as to acts required of the officers of the Registry, it may be directory only. *Re Monsell*, 5 Ir. Ch. Rep. (P.C. Brady, L.C. 1856), *Harding* v. *Carry*, 10 Ir. C.L. Rep., 140 (Ball, J. 1859). But the Act is also, in a sense, a penal Act, and the formalities imposed will not be extended beyond the exact words, where not necessary with regard to the objects of the Act—publicity and notice. *The Queen* v. *Registrar of Deeds, &c.*, 21 Q.B.D. 53 (Bowen, L.J. 1888). Also, it would appear from Irish cases—*Gardiner* v. *Blesinton*, 1 Ir. Ch. Rep. 79 (Brady, L.C.Ir. 1850),† citing *Dillon* v. *Costello*, p. 87, and *Re Monsell* (as above) that the particulars required for memorials, *e.g.*, the parishes, or even the date, are only necessary in so far as they also appear from the deed. Though apparently in *Essex* v. *Baugh*, 1 Y. and C.C.C. 620 (Knight Bruce, V.C. 1842), it was hinted that a memorial of an assignment of lease in which the parcels were by reference merely, and no parish or other description given, would be bad—though as in the deed. This point is closed as to memorials registered on or after 1 April, 1892, by Rule 3 of 1892.

2. *On Errors in the Particulars given in Memorials.*—As to particulars not required by the Act (or which under the circumstances can be omitted) incorrectness or defectiveness will not invalidate the registration so long as there is no tendency to defeat or vary the particulars required by the Act. *Mill* v. *Hill*, 3 H.L.C. 828; (Truro, L.C. 1852); in which case there was a discrepancy between the memorial and the deed as to the grantor in the habendum, the memorial being right and the deed being wrong. So, in *Rochard* v. *Fulton*, 1 Ja. and Lat. 413 (Sugden, L.C. Ir. 1844), the memorial stated some, but omitted others, of the material contents of the deed; also in *McAlpine* v. *Swift*, 1 Ball and B. 285 (Manners, L.C.Ir. 1810), the same circumstance occurred. In *Wyatt* v. *Barwell*, 19 Ves. 435 (Grant, M.R. 1815), the name of the grantee was misspelt, and the grantor's name appeared as grantee in the habendum, but the memorial was held sufficient.

But in a matter likely to be material by affecting the index, it

* Dart 770, Sug 732, and see note (*d*) to sec. 18 (17).
† Reversing S.C., *ibid* p. 64.

Act of 1708, Sec. 1.

Formalities as to Memorials.

would seem that even a small error of spelling may be fatal. *Wyatt* v. *Barwell*, 19 Ves. 435.

The memorial of an indorsed deed conveying "the hereditaments comprised in the within written indenture," or other similar parcels involving a reference to the deed on which it is indorsed, must (in addition to the usual requirements) state the fact of the indorsement, and must set forth the date of, parties to, and parcels in, the former deed, *Reg.* v. *Registrar of Middlesex*, 15 Q.B. 976 (Campbell, C.J., and Ct. 1850). The Rule would seem to apply also to annexed deeds, and to supplemental deeds, so far as the required particulars of the principal deeds appear in them, but no further. As to memorials registered on or after 1 April, 1892, *see* Regulation of 19 April, 1892, p. 53.

It seems, from a case under the old Annuity Act, 17 Geo. III. cap. 26—which is very strict—that a clerical error in respect even of one of the necessary particulars in a memorial may be excused, if the correct reading be apparent from other parts of the document. *Ince* v. *Everard*, 6 T.R. 545 (Kenyon, C.J. 1796).

3. *As to the Proper Person to Execute the Memorial.*—A memorial executed by the Ecclesiastical Commissioners who had assented (by seal) to a deed poll conveying land under the Church Building Act, 3 Geo. IV. 72, s. 2, is bad, as they are neither grantors nor grantees—*Reg.* v. *Registrar of Middlesex*, 1 El. and El. 322 (Lord Campbell, C.J. and Ct. 1858). It was thought at one time (Rigge, p. 106) that a corporation could not execute a memorial within the Act. But *Doe d. Cutlers' Co.* v. *Hogg*, 1 B. & P. N.R. 306 (1805), appears to be a sufficient authority to the contrary, though under a different Act (37 Geo. III. c. 85). A practice obtained for some time (and is recommended in Rigge, p. 143), of remedying this supposed defect by re-execution of the deed (usually by the grantee) in the presence of fresh witnesses "for conveniency of registration." These witnesses then attested the memorial. But it has been decided that this practice is not warranted by the Act, and that such memorials so attested are bad. *Essex* v. *Bough*, 1 Y. and C.C.C. 620 (Knight Bruce, V.C. 1842).

4. *The Witnesses.*—The names, &c., of the witnesses to the deed should be expressly stated in the body of the memorial; it is not enough that they appear in the attestation clause of the memorial, *Harding* v *Carry*, 10 Ir.C.L. Rep. 140 (Ball, J. 1859). Still less will a memorial suffice where the names of the witnesses do not appear in the body of the memorial, and their "additions" are defective also. *Re Jennings*, 8 Ir. Ch. Rep. 421 (P.C. 1854). The substance of these decisions will still apply under the new Act and forms.

The witness to the grantee's execution will suffice under the English Acts, *The Queen* v. *Registrar of Deeds, &c.*, 21 Q.B.D. 53 (Cotton, Bowen and Fry, L.J.J. 1888), but not under the Irish, *Jack d. Rennick* v. *Armstrong*, 1 H. and B. 727 (Downes, C.J. 1819), the latter being directed partly against forgery, which the English Acts do not mention. This being so, it may be doubted whether inaccuracies in regard to the witnesses would be held absolutely fatal in England as in the above cases of *Harding* v. *Carry* and *Re Jennings* in Ireland, in the former of which it is stated (p. 147) that the names and addresses of all the witnesses are part of the policy of the Act.

In two cases under the old Annuity Act, 17 Geo. III. c. 26, memorials were held bad because they named as witnesses some additional

persons who did not in fact attest, *e. p. Mackreth*, 2 East 563 (Ellenborough, C.J., 1802) and *Gibbs* v. *Hooper*, 9 Sim. 89 (Shadwell, V.C. 1838). But the Annuity Act is more strictly construed than Registration Acts (Eldon, L.C., 16 Ves. 428), and the witnesses were part of the policy of the former, which was intended to protect the improvident, by having respectable witnesses to the transaction: and the cases would probably not apply.

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5. *As to Alterations in Memorials.*— It seems that alterations after execution do not invalidate memorials, provided they do not occur in the prescribed particulars, or such of them as are "necessary" under the circumstances of the case. Filling up blanks left for the parishes in a memorial of a deed which did not name the parishes was held an immaterial alteration in *Delacour* v. *Freeman*, 2 Ir. Ch. Rep. 633 (Smith, M.R. 1853).

With regard to memorials registered before 1 April, 1892, and corrected in "necessary" particulars in the Registry, it is (though the usage is well established) at least open to doubt whether such correction is efficacious to validate an otherwise insufficient memorial. I have not been able to find any nearer authority on the point than *Re Sharp's Patent*, 3 Beav. 250 (Langdale, M.R. 1850), which decides that the keeper of the patent records is authorized by precedent to correct verbal slips (of which examples are given), so as to make the enrolment accord with the proved intention of the party at the time, but this should be done with great care, and so as to shew on the face of the instrument. Considering the stringency of the statute of 1708 respecting the execution, attestation, and subsequent verification by oath, of the memorial, it may well be doubted whether in the case of a memorial registered before 1 April, 1892, a correction made in the Registry in the customary manner, can be properly regarded as part of the memorial at all. It was never necessary for the registrar to make corrections. It was his duty to object to discrepancies falling under his notice (per Lord Campbell, C.J., 15 Q.B. 976); but this duty would have been fulfilled by rejecting, for re-execution, all memorials which seemed incorrect.

On and after 1 April, 1892, the oath is abolished (Rule 5), and the correction of memorials is part of the authorized system (Rule 7), and there is no reason to doubt that memorials corrected in the office will be valid in their corrected form.

(*g.*) *Fraudulent and Void.*—At law these words of the Act were construed strictly, and all unregistered instruments were postponed to registered, irrespective of any question of notice, *Doe d. Robinson* v. *Allsop*, 5 B. and Ald. 142 (Abbott, C. J., and Ct. 1821), but in equity the unregistered purchaser has always been able to obtain relief where he can fix the registered claimant with notice of his prior right.

This limitation of the words of the first section is due to the preamble, which shews the object of the Act to be merely the protection of purchasers against prior *secret* conveyances, that is, conveyances of which they have no knowledge at the time when they complete their own.

The law of notice generally will be found fully stated and discussed in Tudor (*Le Neve* v. *Le Neve*), p. 38; Dart, p. 965; Sugden, p. 755; Coote, p. 830; Fisher, paras. 509, 916, and many other text-books. The following is a statement of the authorities affecting its application to Registry Acts.

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In *Lord Forbes* v. *Deniston*,* 4 Bro. Parl. Ca. 189 (House of Lords, affirming Middleton L.C.Ir. 1722), a registered settlement was postponed to a prior unregistered lease, notice of which had been given to the agent of the parties during the negociations. In *Chival* v. *Nichols*, 1 Eq. Ca. Abr. 63 para. 7, and 1 Str. 664 (Exchequer Chamber, Gilbert, C.B. 1725), a registered purchaser was postponed to an unregistered annuity which he had known of, and paid, as concerned for the vendor in the management of some of his affairs.

So in *Blades* v. *Blades*, 1 Eq. Ca. Abr. 358, para. 12 (King, L.C. 1727), "a case between two purchasers of lands in Yorkshire, where the second purchaser, having notice of the first purchase, but that it was not registered, went on, and purchased the same estate, and got his purchase registered; yet it was decreed, that having notice of the first purchase, though it was not registered, bound him, and that his getting his own purchase first registered was a fraud, the design of those Acts being only to give parties notice, who might otherwise, without such Registry, be in danger of being imposed upon by prior purchase or mortgage, which they are in no danger of when they have notice thereof in any manner, though not by the Registry." (The above is the whole report.)

On the other hand, in *Hine* v. *Dodd*, 2 Atk. 275 (Hardwicke, L.C. 1741), it was held that to postpone a registered instrument, and break in upon an Act of Parliament, the evidence of notice must be very clear—clearer, it would seem, than in similar cases where a Registry is not in question, but how much clearer it is not easy to define. (*See* further, pp. 21, 22.)

It will be observed that the above four cases were all decided within thirty-three years of the passing of the Middlesex Registry Act; their authority has always been upheld, and they also contain every matter of principle applicable to the subject. The later cases, of which a review is appended, contain examples of their application in practice.

The classification of notice here adopted is that suggested by Lord Chelmsford, 3 D.G. and J. p. 554.

(1.) *Express Notice to Principal.*—In *Eyre* v. *Dolphin*, 2 Ball and B. (Manners, L.C.Ir. 1813), a registered grantee admitted having heard of "some such settlement," when he made his purchase, and his registered conveyance was postponed to the settlement, though unregistered.

In *Ford* v. *White*, 16 Beav. 120 (Romilly, M.R. 1852), a conversation (proved), in which the mortgagor had told the mortgagee that there were previous charges, was held fatal to the mortgagee's registered priority; see also *Robinson* v. *Woodward*, 4 D.G. and S. 562, below p. 22.

(2.) *Express Notice to Agent—Imputed Notice to Principal.*—In *Le Neve* v. *Le Neve*, Amb. 436, 3 Atk. 646 (more fully), and 1 Ves. 64 (Hardwicke, L.C. 1747), a registered settlement made on a second marriage was postponed to unregistered articles made on the prior marriage; the husband's solicitor, who also acted for the wife in the second case, knowing of the former settlement at the time he prepared the latter (Lord Romilly says, 6 L.R. Ch. App. 679 (*n.*), that the lady knew too, but the case was not decided on this ground). This case is often spoken of as having introduced the doctrine of "constructive" notice into matters of this kind, but this is incorrect. In the first place, notice to an agent is not properly classed with "constructive," but rather with "actual" notice (of which, under the name of "imputed," it forms a variety), and, in the next place, the exact point had already been decided by the House of Lords in

* Sometimes cited as *F.* v. *Nelson.*

the Irish case of *Lord Forbes* v. *Deniston* above cited, and mentioned by Lord Hardwicke in his judgment.

In *Sheldon* v. *Cox*, 2 Amb. 624 (Northington, L.C. 1763), the owner of the land, having already mortgaged it by unregistered deed, further mortgaged it by registered deed to other persons, acting himself in the matter as their "counsel and agent." His knowledge, as landowner, of the former unregistered mortgage was imputed to his clients, and their registered security was postponed to it.

The same circumstance of a barrister or solicitor being, or posing as, the owner of the land, and thereby becoming the vehicle of notice of the real title to a registered purchaser for whom he acts, occurs in *Marjoribanks* v. *Hovenden*, 11 Dru. 22 (Sugden, L.C.Ir.), *Rorke* v. *Lloyd*, 13 Ir. Ch. Rep., N.S. 273 (Longfield, J. 1862), *Bradley* v. *Riches*, 9 Ch. D. 189 (Fry, J. 1878), (where it was further laid down that the rule applies equally where it is to the solicitor's interest to conceal the truth as in other cases,) and *Re Weir, Hollingworth* v. *Willing*, 58 L.T. 792 (Chitty, J. 1888).

In *Tunstall* v. *Trappes* (*Gosling's case*), 3 Sim. 301 (Shadwell, V.C. 1829), the same solicitor acted in two transactions. The first recited an unregistered judgment. This was held to be proof of knowledge in the solicitor, sufficient to affect his client in the second transaction, notwithstanding registration.

In *Nixon* v. *Hamilton*, 2 Dru. and Wal. 364 (Plunket, L.C.Ir. 1838) the same solicitor acted for the first (unregistered) incumbrancer, for the owner of the land, and for the second incumbrancer, who was registered. Held, though an interval of four years had elapsed between the two transactions, and though the mere fact of the second incumbrancer having advanced his money on the security was proof (under the circumstances) that the solicitor had not actually told him of the first charge, the registered priority was destroyed. This latter circumstance was again held to be immaterial in *Rolland* v. *Hart*, 6. Ch. App. 678 (Hatherley, L.C. reversing Romilly, M.R.), provided the solicitor was not engaged in a scheme of actual fraud, as in *Kennedy* v. *Green*, 3 M. and K. 699. *See* also *Robinson* v. *Woodward*, stated p. 22.

On the other hand, the application of some of the above cases (but not *Re Weir*, which was in 1888) is modified by the Conveyancing Act, 1882, sec. 3 (1), which confines imputed notice to cases where the knowledge came, or ought to have come, to the agent *as such*, and *in the same transaction*. The section is retrospective, subs. (4).

In *Re Stephen*, Ir. Rep. 10 Eq. 282 (Ormsby, J. 1875), notice was not imputed to a registered purchaser through his agent where the agent made an untrue statement of fact to him.

(3) *Constructive Notice.*—Where the circumstances are suggestive of enquiry, or where enquiry is designedly omitted to avoid the risk of notice.

In *Hine* v. *Dodd*, as already stated, Lord Hardwicke held that notice must be very clear, in order to postpone a registered deed. On this, a number of decisions have been engrafted, which are given below. It will be seen that at one time there was a considerable readiness to let in constructive notice wherever the facts were clear. But the latest decisions—notably, Jessel, M.R., in *Lee* v. *Clutton*, 45 L.J., ch. 43 (affirmed on appeal, 46 L.J. ch. 48), seem adverse to admitting constructive notice, *as such*, in registration cases at all; nothing less than express notice to principal or agent or *fraud*, being allowed to vitiate a registered purchase.

In *Martinez* v. *Cooper*, 2 Russ. 198 (Eldon, L.C. 1826), a solicitor who

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produced a deed to the purchaser's solicitor, informed the latter that a portion of the purchase money would be paid to certain persons other than the vendor. The fact of the conversation was denied by the purchaser's solicitor, but a jury found that it had taken place. There was no other notice or circumstance of suspicion. The whole purchase money was paid to the vendor, and the purchaser's conveyance was registered. Lord Eldon held that this was "negligence amounting to fraud," and that the registered purchaser was thereby affected with constructive notice of a heavy unregistered mortgage, held by the persons alluded to by the solicitor who produced the deeds.

In *Rochard* v. *Fulton*, 1 Jo. and Lat. 413 (Sugden, L.C.Ir., 1844), a duly registered incumbrancer had received, or had been offered, a copy of a memorial of a prior deed which stated some, but omitted others, of the material contents. Held, that, even supposing the memorial defective for the purposes of the Registry Acts, and the deed therefore unregistered, yet that the subsequent registered incumbrancer was affected with constructive notice of the actual deed, and of all its contents.

In *Robinson* v. *Woodward*, 4 D. G. and S. 562 (Knight Bruce, V.C. 1851), direct, imputed, and constructive notice of a judgment (registered in Common Pleas only) were charged against (and denied by) a subsequent registered purchaser—the constructive notice being by reason that a search had been made in the Common Pleas registry. *All* these points being held material, an issue as to the facts was directed; but, the matter being compromised, no further decision was obtained.

In *Wormald* v. *Maitland*, 35 L.J. ch. 69 (Stuart, V.C. 1866), the persons entitled under an ante-nuptial marriage settlement, where not only no investigation of the settlor's title was made, but no enquiry even had been made for the settlor's title deeds, were held guilty of such neglect as to let in constructive notice of a prior unregistered equitable charge. This case was commented on in *The Agra Bank* v. *Barry*, 7 L.R. E. and I., App. p. 150, but in a guarded manner, which left the point above stated intact.

On the other hand, it was held in the last-mentioned case, that where there is not actual notice [to principal or agent] mere negligence to take all possible precautions is not so fatal in a register county as where there is no register, and will not destroy priority obtained by registration, unless so reckless as to convey a suspicion of actual fraudulent intent (Cairns, L.C., 7 L.R. Eng. and Ir. App. 148, 9). A person is guilty of gross negligence who does not register, hence it is difficult for such a one to make anything of negligence in his opponent (Lord Hatherley, *ibid* 155, 6). A purchaser's "duty" (so called) of enquiring for deeds is not for the protection of possible latent titles, but for his own security. If he omits it, the fact requires explanation, to show that he is not purposely avoiding knowledge, but that is all; and the existence of a statutory register is a very material circumstance in such explanation. (Lord Selborne, *ibid*, p. 157); *see* also Jessel, M.R. 45, L.J. Ch. 43.

There are, accordingly, several cases in which the point of constructive notice has been *un*successfully raised against registered purchasers, in some, at least, of which the allegation would probably have been successful in a non-register county.

(i.) *Cases where the Evidence has not been considered clear* within the rule of *Hine* v. *Dodd*—besides that case itself.

Jolland v. *Stainbridge*, 3 Ves. Ir. 478 (Arden, M.R. 1797), *Wyatt* v. *Barwell*, 19 Ves. 435 (Grant, M.R. 1815), *Chadwick* v. *Turner*, 1 Ch.

App. 310 (Turner and Knight Bruce, L.J.J. 1866). These cases are all rather involved and cannot be usefully abridged. Act of 1708; Sec. 1. Notice.

(ii.) *Where omissions or neglects of the registered purchaser were proved or admitted, but were not considered grave enough* to fix him with constructive notice :—Omission to examine carefully a parcel of deeds handed to him by his own solicitor as "the title deeds" from which the last conveyance had been abstracted. *Neve* v. *Pennell*, 2 H. and M. 171 (P. Wood, V.C. 1863). Omission to enquire as to the terms of a tenancy (in occupation), which might have been registered, but was not—*Reilly* v. *Garnett*, Ir. Rep. 7, Eq. 9. 1. (C. A. Ir. 1872). Non-examination of title in preparing a marriage settlement (a reasonable excuse being given for the absence of the title deeds)—*Agra Bank Limited* v. *Barry*, 7 L.R., E. & I. App. 135 (Cairns, L.C. and Lords Hatherley and Selborne, 1874.) Abstention from enquiry of first mortgagee (found on register) as to state of mortgage debt, which would have led to discovery of an unregistered further charge—*Credland* v. *Potter*, 10 Ch. App. 8 (Cairns L.C., James, and Mellish, L.J.J. affirming Bacon, V.C. 1874). A creditor, on taking a mortgage for an existing debt, makes no enquiry as to title, or as to deeds,* though knowing that some (for a reason assigned) were not in the possession of the mortgagor. *Lee* v. *Clutton*, 46 L. J., ch. 48 (James, Mellish and Baggallay, L.J.J. affirming Jessel, M.R. 1876). In a small purchase—under £50—purchaser's solicitor made no investigation of title—*Kettlewell* v. *Watson*, 21 Ch. D., 685 (Fry. J. 1882).

Further illustration of the strength of the general rule as to notice avoiding Registration.—If further proof be needed of the strength of the rule (as to notice generally avoiding the priority conferred by Register Acts) it may be mentioned that it has been extended by analogy to an Act relating to evictions in Ireland (8 Geo. I. cap. 2)—*Biddulph* v. *St. John*, 2 Sch. and Lef. 521. (Redesdale, L.C.Ir. 1805), to the registration of judgments under 4 & 5 W. and M., c. 20 s. 3, and 7 & 8 W. and M., c. 36. s. 3. *Davis* v. *Lord Strathmore*, 16 Ves. 419 (Eldon, L.C. 1810), and to the registration of annuities under 18 & 19 Vic. c. 15. s. 12. *Greaves* v. *Tofield*, 14 Ch. D. 563 (James, Baggallay and Bramwell, L.J.J. 1880). The rule also obtains in the United States :—"Notice of a prior unrecorded deed takes the case out of the statute, because a purchaser cannot be considered as purchasing in good faith." *Goodenough* v. *Warren*, 5 Saw. 494.

Further distinctions as to Notice and Registration.

(1.) *Registration is not in itself Constructive Notice*†—*Bedford* v. *Backhouse* or *Bacchus*, 2, Eq. Ca. Abr. 615 para 12 (King, L.C. 1730), *Wrightson* v. *Hudson*, *ib.* (Jekyll, M.R. 1737), *Morecock* v. *Dickens*, Amb. 678 (Camden L.C. 1768), *Cator* v. *Cooley*, 1 Cox 182 (Thurlow L.C. 1785), *Williams* v. *Sorrell*, 4 Ves. 439 (Loughborough, L.C. 1799), *Underwood* v. *Lord Courtown*, 2 Sch. and Lef. 64 (Redesdale, L.C.Ir. 1804), *Wiseman* v.

* This is not necessarily at variance with *Wormald* v. *Maitland*—for there the consideration was an intended marriage. Here the debt was an existing one, and the creditor took what he could get.

† There is a dictum of Lord Hardwicke's in *Hine* v. *Dodd*, to the effect that the register is notice to everybody.—2 Atk. 275 (1741). This was cited in *Morecock* v. *Dickens*, but was doubtless considered to mean merely that the register *operated by way of notice* in all cases, which was the only point needed for the decision.

Act of 1708, Sec. 1. *Notice.*

Westland, 1 Y. J. 117, Exh. Ch. 1826, *Re Russell Road purchase moneys* 12 Eq. 78, (Malins, V.C. 1871): *unless* the register is searched for the period containing the instrument in question, *Bushell* v. *Bushell*, 1 Sch. and Lef. 90 (Redesdale, L.C.Ir. 1803), *Hodgson* v. *Dean*, 2 Sim. and St. 221 Leach, V.C. 1825). Consequently a registered second mortgagee should not omit to give notice to the first mortgagee—*Bedford* v. *Backhouse*, as above. Nor can the registered assignee of a mortgage, who omits to give notice to the mortgagor, avoid allowing payments made by the latter to the original mortgagee in consequence, *Williams* v. *Sorrell*, as above. Tacking is also available against a *mesne* registered incumbrancer under the same circumstances as in counties where there is no register—*Cator* v. *Cooley*, as above, *Re Russell Road*, as above, though *quære* in the latter case, whether an assignment of the last two days of a term is a sufficient legal estate for the purposes of tacking.

(II). *On the decision that the Register is Notice if searched*, it appears to follow that even a defective registration might thus operate as notice so far as it goes. *Rochard* v. *Fulton*, 1 Jo. and Lat. 413 (Sugden L.C.Ir. 1844), seems an authority for so thinking, for there a copy of a defective memorial was the vehicle of actual notice. It is also pointed out in *Latouche* v. *Lord Dunsany*, 1 Sch. and Lef. 137 (Brady L.C.Ir. 1803), that to make the register (generally), notice would protect deeds mentioned thereon whether duly registered or not, and the remark will apply also to the case now supposed. The point does not appear to have been raised in our Courts, but in *Schults* v. *Moore*, 1 McLean 520 (U. S. Circuit Court 1839), it was held *contra* that where a statute makes recording constructive notice (and the present example is much the same thing), and "a purchaser is to be charged with constructive notice from the mere registration of a deed, all the substantial requisites of the law should be complied with," p. 527.

(III.) *As to Notice between Completion and Registration.*—By analogy to the rule as to acquisition of the legal estate (known as the *tabula in naufragio*), it follows that where notice of a prior unregistered right is not received till after the completion of a transaction, the registration will be efficacious notwithstanding; and so decided, as to a mortgage, in *Hine* v. *Dodd*, 2 Atk. 275 (Hardwicke L.C. 1741); a marriage settlement, *Elsey* v. *Lutyens*, 8 Ha. 159 (Wigram V.C. 1850); and a sale, *Reilly* v. *Garnett*, Ir. Rep. 7 Eq. 1 (C.A. 1872).

(*h*.) See note (*f*).

(*i*.) *On the effect of Registration.*—It will be observed that registration under the Act only protects purchasers. It has no effect on the priority of volunteers (but voluntary deeds must be registered for the protection of the titles of purchasers traced through them). Also, registration does not equalise the relative values of the legal and equitable estate. In these two respects it differs from registration in Ireland, *Bushell* v. *Bushell*, 1 Sch. and Lef. 90 (Redesdale L.C.Ir. 1803); *Drew* v. *Lord Norbury*, 3 Jo. and Lat. 303 (Sugden L.C.Ir. 1846); *Mill* v. *Hill*, 3 H.L.C. 828 (Truro L.C. 1852), which gives a substantial priority to all registered deeds according to the dates of their registration, save only that purchasers are not postponed to volunteers. With this exception, the effect of registration under all the Acts is so similar, that the cases will apply indiscriminately.

Act of 1708, *Effect of Registration.*

The effect of the section is thus summarised in a high authority*: "A purchaser can be evicted only by a person claiming under an instrument executed by the party under whom the two adverse titles are derived, or parties taking under him by act in law, and whose conveyance is registered prior to the registration of the document which forms the root of the purchaser's adverse title."

Every deed must be separately registered, and the registration of one deed will not protect another (except, possibly, by giving notice of it to persons who search, which is very inadequate protection), even though it recites it: *Honeycomb* v. *Waldron*, 2 Stra. 1064 (Hardwicke, C.J. 1736), unless the second deed amounts to a re-grant—in which case it would be more correct to say that the registration of the first deed *may* become immaterial—*Hunter* v. *Kennedy*, 1 Ir. Ch. Rep. 148 and 225 (Brady, L.C.Ir. affirming C. Smith, M.R. 1850).

In a contest as to priority the registration of a deed common to both titles is immaterial—*Stuart* v. *Ferguson*, Hayes Ir. Ex. Rep. 452 (Joy, C. B. 1832); *Mill* v. *Hill*, 3 H.L.C. 828 (Truro L.C. 1852).

Registration of a grantee's deed does not remedy the non-registration of the grantor's, nor registration of an assignment the non-registration of a lease, though the lease be recited in it. *Jack d. Rennick* v. *Armstrong*, 1 H. and B. 727 (Downes C.J. 1819); *Honeycomb* v. *Waldron*, 2 Stra. 1064 (Hardwicke L.C. 1736); *Battersby* v. *Rochfort*, 2 Jo. and Lat. 431 (Sugden L.C.Ir. 1845).

Registration of *A.'s* deed is not necessary as a protection against *B.* claiming under a deed postponed (for want of registration), to a registered deed occurring earlier in *A.'s* title. *Warburton* v. *Loveland* (also cited as *W.* v. *Ivie*), 1 H. and B. 623; Bligh N.R. 1; and (in H.L), 2 Dow. and Cl. 480 (1832).

With respect to mortgages it has been held that further advances made by registered first mortgagee, without notice of registered second mortgage, are prior to the second mortgage—*Bedford* v. *Backhouse* or *Bacchus*, 2 Eq. Ca. Abr. 615 para. 12 (King, L.C. 1730). This is not the case in Ireland.

Also that registered third mortgagee who lends without notice of a registered second mortgage, may get in the first mortgagee's legal estate, and tack—*Cator* v. *Cooley*, 1 Cox 182 (Thurlow L.C. 1785). This is not the case in Ireland—*Latouche* v. *Lord Dunsany*, 1 Sch. and Lef. 137 (Brady, L.C.Ir. 1803).

In *Re O'Byrne*, 15 L.R. Ir. 189, 373. (C. A. affirming Flanagan, J. 1885), there was (*a*) a registered first mortgage to a Bank to include future advances, (*b*) a registered second mortgage, but without notice to the Bank, (*c*) petition for sale by second mortgagee; also registered as a *lis pendens* outside the Deed Registry, but also without notice to the Bank; (*d*) notice to the Bank of the order for sale. And it was held that further advances made before (*d*) were prior to the second mortgage.

The position of a registered second mortgagee who knows how much has been lent on the first mortgage is this: "All unregistered conveyances prior to my security are fraudulent and void against me; I am therefore safe as to the past, and I can guard myself against any future further charges by giving the first mortgagee notice." (Cairns, L.C. in *Credland* v. *Potter*, 10 Ch. App. 8, 1874).

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* Dart p. 963.

Act of 1708, Secs. 1 & 2.

A subsequent mortgagee, who has obtained priority by registration, may consolidate against the prior mortgagee who is behind him on the register—*Neve* v. *Pennell*, 2 H. and M., 171, (P. Wood, V.C. 1863).*

Effect of Registration.

The rule that the assignee of an equity is bound as his assignor, applies to registered assignees. Where third mortgagee has notice of a second, and so gets no priority by registration, his assignee is likewise bound, though having no notice himself, *Ford* v. *White*, 16 Beav. 120 (Romilly, M.R. 1852). But in *Chadwick* v. *Turner*, 1 Ch. App. 310, (Turner and Knight Bruce, L.J.J. 1866), it was thought possible that under the statute a registered equitable mortgagee might be no more affected by notice to his mortgagor than a legal mortgagee would be (p. 319).

Registration of a deed containing a full receipt for the purchase money where in fact only part is paid, does not necessarily, but may under certain circumstances contribute to, imply a waiver of vendor's lien—*Kettlewell* v. *Watson*, 21 Ch. D. 685 (Fry, J. 1882), S. C. on appeal 26 Ch. D. 501 (Baggallay, Cotton, and Lindley, L.J.J.).

A registered charge of "all the separate estate" of *A.*, is held to mean subject to prior charges if any, registered or unregistered—*Punchard* v. *Tomkins*, 31 W. R. 286, (Chitty, J. 1882). A conveyance of "all the estate of *A.*" in given hereditaments, would appear to be also within the same reasoning. But *held* in *Harding* v. *Carry*, 10 Ir. C. L. Rep. 140 (Ball, J. 1859), that in a lease the words "provided the title of *A.* shall last so long"—(which appear to have been at one time a more or less common form), did not confine the lease to the life of *A.*, which was all he had left under a prior unregistered settlement by himself.

The effect of Registration and Enrolment Acts is less stringent than in Shipping and old Annuity Acts. The former leave room for equities, the latter do not; Eldon, L.C. in *Davis* v. *Lord Strathmore*, 16 Ves. 419, (1810).

To acquire an interest in land in a mode capable of registration, confers no better equity than to acquire it in a mode incapable of registration, *e.g.* by deposit of deeds without written memorandum, *Re Burke's Estate*, 9 L.R. Ir. 25 (C. A. 1881).

The benefit of registration may be lost by negligence, amounting to evidence of fraud, *e.g.* omitting (for no cause) to obtain possession of the mortgage deed on an assignment, *Re Allen's Estate*, Ir. Rep. 1 Eq. 455, (Lynch, J. 1867).

Cooper v. *Vesey*, 20 Ch. D. 611, is authority (if it be wanted) for the proposition that a forged deed acquires no validity by registration.

(*j*.) The wording here, differs from the words above used as to "deeds and conveyances". First, "a memorial" instead of "such memorial . . . . . as by this Act is directed". But as the sections 5 to 6, and the corresponding provisions of the new Act and Rules do not make any distinctions in point of formalities, between memorials of wills and of deeds, it would not seem that any greater laxity would be allowed in the former than in the latter, by reason of this difference. If this view be correct, the above note (*j*) will apply equally to memorials of wills as to memorials of deeds and conveyances. Second, "at such times" is added to the "manner" hereinafter directed. This refers to sections 8, 9, 10, *which see* with the notes thereto.

Registers appointed.

2. And for settling and establishing a certain method with

* Of course this is now subject to Sec. 17 of the Conveyancing Act, 1881.

proper rules and directions for registering such memorials as aforesaid, be it further enacted by the authority aforesaid, That one public office for registering such memorials of and concerning any honors, manors, lands, tenements and hereditaments that are situate, lying, and being within the said county shall be erected and established. Act of 1708, Secs. 2 to 8.

The remainder of the section (now repealed) provided for the appointment of the registrars and their deputies, the situation of the office, and the making of rules. The only trace obtainable of any such rules is in a note to p. 96 of *Rigge on Registration*. One of these was for altering the office hours, the other "permitting acceptance of office copies of wills and of certificates to discharge judgments." It has been doubted whether these latter practices are warranted by the Act, and they have long since been discontinued. No copy or other record of such rules exists in the office, and the new Rule 21 rescinds them if existing.

Sections 3 and 4 related to the registrar's oath and his personal liability for mistakes, and are repealed. The registrar is not now personally liable for mistakes (*see* Act of 1891 sec. 1 and note).

Sections 5, 6 and 7, regulated with much minuteness the formal parts of memorials and the proceedings on registration. These sections are now repealed by the Act of 1891, and their provisions are replaced by paras. 1 to 9 of the First Schedule to that Act, and Rules 2, 4, 5 and 6 of 1892. The original provisions of the Act of 1708 are noted against the said paras. where different. It would seem that memorials brought to the Registry on or before the 31st of March, 1892, must be executed according to the old method; and that memorials brought on or after the 1st of April, 1892, must be executed in the method prescribed by the new Act and Rules. This latter rule will apply to memorials executed before, but registered on or after, the 1st of April. But *see* Regulation 2 of 24 Mar., 1892, p. 53.

8. Provided also, and it is hereby enacted, that all memorials of wills that shall be registered in manner as aforesaid within the space of six months after the death of every respective devisor or testatrix dying within the kingdom of Great Britain, or within the space of three years after the death of every respective devisor or testatrix dying upon the seas or in any parts beyond the seas, shall be as valid and effectual against subsequent purchasers as if the same had been registered immediately after the death of such respective devisor or testatrix; anything herein contained to the contrary thereof in anywise notwithstanding. Memorials of wills to be registered in six months after testator's death, dying within Great Britain, and three years if beyond seas.

The intention of this section seems obvious enough, namely, to keep

Act of 1708, Sec. 8. Wills.

the register open for a suitable period after a death, and no more. In *Chadwick* v. *Turner*, 1 Ch. App. 310 (Turner and Knight Bruce, L.J.J., 1866),* it was held that a will, registered after the period named in the Act, could not oust a mortgage by the heir which was *already* on the register. The words of the judgment (p. 317), being very wide, raised doubts as to the validity of wills registered out of time, even as against *subsequently* registered conveyances, &c., by the heir. To remedy this, section 8 of the Vendor and Purchaser Act, 1874 (Royal assent, 7 Aug., 1874) enacts that "Where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law in that behalf, an assurance of such land to a purchaser or mortgagee by the devisee or by one deriving title under him shall, if registered before, take precedence of and prevail over any assurance from the testator's heir-at-law."

Doubts have been expressed † as to whether or not this latter enactment is retrospective. It would seem a wise precaution, in the case of deaths before the Act, to see that the will was registered within the proper period, or, if not, that the heir concurs in the conveyance. Even this, though apparently enough to make the title "marketable," would be no protection, in itself, against the registration of unknown incumbrances by the testator. In these cases especially it is worth consideration whether the effect of *Chadwick* v. *Turner* is really so extensive as has been thought, and whether it may not be a useful precaution to register the will even though after the expiration of the period named in the Act.

The enactment of 1874 has also caused a further difficulty, by seeming to render it unnecessary to register a will at all, provided only a conveyance for value from the devisee is registered before any conveyance from the heir.‡ If this construction be correct, it will introduce serious uncertainty into titles traced through heirs, because in such case the index would fail to shew a registered deed executed by a devisee under an unknown or suppressed will. If registration of the will be still necessary in every case, a purchaser from the heir knows what name to search in—namely, the testator's—but if not, and if a prior registered grant by a devisee is to prevail over a grant by the heir, no effectual protection is obtainable by purchasers from the latter.

The exact meaning of the section being doubtful, it would seem that the Court would hardly allow a construction to prevail which is opposed to the objects of the Act, and accordingly it would be prudent for purchasers from devisees to see that the will, as well as the conveyance, is registered.

Wills brought for registration outside the prescribed periods are registered without question.

Registration of wills is frequently delayed. The risks incurred are illustrated by the late case of *Re Weir Hollingworth* v. *Willing*, 58 L.T. 792 (Chitty, J. 1888). The heir, a barrister, knowing of an unregistered will, gave mortgages of the testatrix's estate in Middlesex to two of his relations to whom he owed money. He acted for them, and registered the mortgages. The devisee was (apparently) only saved by the (imputed) notice of the will which the mortgagees had through their mortgagor and agent.

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* The case was on the E. Riding Act, but the words are identical.
† Dart, 772.
‡ Prid. i. 154.

9. Provided always, that in case the devisee or person or persons interested in the honors, manors, lands, tenements, or hereditaments devised by any such will as aforesaid, by reason of the concealment or suppression or contesting such will, or other inevitable difficulty, without his, her, or their wilful neglect or default, shall be disabled to exhibit a memorial for the registry thereof within the respective times hereinbefore limited, and that a memorial shall be entered in the said office of such contest or other impediment within the space of two years after the death of such devisor or testatrix who shall die within the kingdom of Great Britain, or within the space of four years next after the decease of such person who shall die upon the sea or beyond the seas, then and in such case the registry of the memorial of such will within the space of six months next after his, her, or their attainment of such will or a probate thereof, or removal of the impediment whereby he, she, or they are disabled or hindered to exhibit such memorial, shall be a sufficient registry within the meaning of this Act, anything herein contained to the contrary thereof in anywise notwithstanding.

If the Devisee be disabled, the registry in six months after the disability removed shall be sufficient.

10. Provided nevertheless, that in case of any concealment or suppression of any will or devise any purchaser or purchasers shall not be disturbed or defeated in his or their purchase, unless the will be actually registered within five years after the death of the devisor or testatrix.

Will concealed, &c. if not registered in five years after the devisor's death, shall not defeat a purchase.

Sections 11, 12, 13 and 14 are repealed by the Act of 1891. They related solely to fees, office hours, searches, recognisances for registrar's due performance of his duties, and recovery of damages from registrar.

Section 15*, relating to punishments for forgery, is repealed by 24 and 25 Vic. c. 95, s. 1.

Section 16,* as to the penalty for perjury before the registrar, is not repealed, but is practically superseded by sec. 101 of the Land Transfer Act, 1875, incorporated with the Middlesex Deeds Acts by sec. 1 of the (second) Act of 1891.

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* This is the numbering of the "Revised Statutes" which, by the Interpretation Act, 1889, sec. 35, sub-sec. 2, is the numbering to be followed. In the Queen's printer's copies and in the "Statutes at large," the two are thrown together as section 15, and the subsequent sections are numbered accordingly 16 to 21, instead of 17 to 22, as below.

Act of 1708, Sec. 17.

Upon certificate and proof made to the Register that money due on a mortgage entered in the registry has been satisfied the Register shall make an entry in the margents against the inrolment, &c.

17. (16.)* And be it further enacted by the authority aforesaid, that in case of mortgages (*a.*) whereof memorials shall be entered in the said register office pursuant to this Act, if at any time afterwards a certificate (*b.*) shall be brought to the said Registers or Masters, signed by the mortgagee or mortgagees, in such mortgage, his, her, or their executors, administrators, or assigns, (*c.*) and attested by two witnesses, whereby it shall appear that all moneys due upon such mortgage have been paid or satisfied in discharge thereof, which witnesses shall upon their oaths (*d.*) before the said Registers or Masters, or before a Master in Chancery, ordinary or extraordinary (who are hereby respectively empowered to administer such oath), prove such moneys to be satisfied or paid accordingly, and that they saw such certificate signed by the said mortgagee or mortgagees, his, her, or their executors, administrators or assigns, that then and in every such case the said Registers or Masters shall make an entry in the margents of the said register books against the registry of the memorial of such mortgage, that such mortgage was satisfied and discharged according to such certificate to which the same entry shall refer, and shall after file such certificate to remain upon record in the said register office (*e.*).

(*a.*) Though this applies nominally to all mortgages, it is not of any practical use in the case of first mortgages of the legal estate (after the time limited for payment has expired), which must always remain part of the title. It should be observed too, that the discharge is not rendered any the more effectual by virtue of registration.

(*b.*) As to the form of Certificate, Stamp Duty, and regulations respecting registration, *see* the Rules 2 and 5 of 1892, and Forms 4 and 5.

(*c.*) *Assigns.*—To execute this provision properly, a complicated and difficult enquiry into title would occasionally be thrown on the registrar. As the office is generally regarded as merely "ministerial," this has been restricted by sec. 5 of the Act of 1891.

(*d.*) The affidavit in Form 4 will not be needed in cases where the witnesses can attend and verify at the office, whereby a saving of the fee for the affidavit is effected : *see* Fee Order (p. 51).

(*e.*) Special provisions for vacating registrations of mortgages are contained in the Building Societies Act, 1874, sec. 42, and the Friendly Societies Act, 1875, sec. 16, sub-sec. 8. The former of these is as follows :—"If the said mortgage or further charge has been registered under any Act for the

* See note to p. 29.

registration or record of deeds or titles, the Registrar . . . shall, on production of such Receipt, verified by the oath of any person, make an entry opposite the entry of the charge or mortgage to the effect that such charge or mortgage is satisfied, and shall grant a certificate, either on the said mortgage or charge, or separately, to the like effect, which certificate shall be received in evidence in all Courts and proceedings without any further proof, and which entry shall have the effect of clearing the register or record of such mortgage"; for a fee of 2s. 6d. The F. S. Act, 1875 is substantially, and, to a great extent, verbally, the same, omitting the final words "and which entry" to "of such mortgage," which are an addition to the Act of 1708, and which might easily prove to be of great importance in a contest of priorities, supposing the entry to have been procured by fraud. Act of 1708, Secs. 17, 18.

It will be observed that in these cases no certificate need be prepared by the parties, and the registrar is required to give a certificate of satisfaction (usually done by endorsement) which in other instances he does not do. When convenient for the verifier to attend at the office, small expenses will be saved as above mentioned; if not, affidavits will be found in Forms 5 and 17, to meet the respective cases.

18 (17).* Provided always, and be it further enacted, that this Act shall not extend to any copyhold estates (*a*) or to any leases at a rack-rent; (*b*) or to any lease not exceeding one-and-twenty years, where the actual possession and occupation goeth along with the lease (*c*); or to any of the chambers in Serjeants' Inn (*d*), the Inns of Court, or Inns of Chancery; anything in this Act contained to the contrary thereof in anywise notwithstanding. This Act not to extend to copyhold estates, &c.

(*a*). A deed of enfranchisement of copyholds is not within this exception, and should be registered—*The Queen* v. *Registrar of Deeds, &c.*, 21 Q.B.D. 53 (Cotton, Bowen and Fry, L.J.J., 1888). But the judgment rests somewhat on the deed comprising minerals also, as well as mere enfranchisement.

The registration of leases of copyholds is recommended † in all cases where they would require registration if granted out of freeholds. It has even been suggested,‡ and with considerable appearance of reason, that all deeds not usually entered on court rolls should be registered, *e.g.*, covenants to surrender, as well as leases, and assignments thereof.

(*b*). It is doubtful§ whether a lease originally at a rack rent, and so within the exception, may not come out of it by reason of improvements. The exception should be cautiously relied on in practice, and probably a lease (for over 21 years) containing an *engagement* to improve would require registration under all circumstances.

(*c*.) Receipt of rents merely is not "actual possession" within the mean-

* See note to p. 29.
† Sug., 732; Dart, 769; Platt, 569.
‡ Rigge, 88.
§ Rigge, 88 Sug. 579; Platt, 569; Dart, 769.

Act of 1708, Secs. 20 to 22.

ing of this section—*Fury* v. *Smith*, 1 H. and B. 735 (Bushe, C.J.Ir. 1822), and consequently a 21 years' lease of land let to a tenant requires registration.

It is doubtful whether assignments of excepted leases are within the exception. On similar words under the Irish Act it was stated by Pennefather, B., that he had a note of a case in which, upon the wording of the statute, registration of such assignments was held necessary. *Lessee of Fleming* v. *Nevills*, Hayes Ir. Rep. 23 (1830).

All assignments of excepted leases for mortgage purposes should certainly be registered, for under a mortgage the possession and occupation can hardly be "actual," and the fact of its being a security disposes of the plea of a rack-rent.

(*d.*) The exception of Serjeants' Inn, which is part of the City of London, has been thought* to indicate an intention to include the City in the Act. But the better opinion† is now against this supposition, which has never been acted upon in recent times.

As to land registered under the Land Transfer Acts, *see* p. 15.

Sections 19, 20 (18, 19)‡—repealed by section 6 of the Act of 1891—provided that no judgment should bind lands in the county, but only from the time that a memorial were registered in the Registry containing the particulars, and being authenticated as, therein mentioned.

Considering that the section is now repealed, and that since 29 July, 1864, no judgment has bound lands unless delivered in execution, and that since 1888 all executions must be registered in the Land Registry, it seems hardly necessary to refer to this section further than to say that the following cases may be found useful should any question ever arise upon it :—

Fury v. *Smith*, 1 H. and B. 735.
Johnson v. *Houldsworth*, 1 Sim. N.S.
Westbrooke v. *Blythe*, 3 E. and B. 737.
Hughes v. *Lumley*, 4 E. and B. 685.
Lee v. *Green*, 6 D.G. M. and G. 155.
Benham v. *Keane*, 1 Joh. and H. 685.
Eyre v. *McDonnell*, 9 H.L.C. 619.
O'Connor v. *Stephens*, 13 Ir. C.L. Rep. 63.
Neve v. *Flood*, 33 Beav. 666.
Burrows v. *Holley*, 35 Ch. D. 123.

There is no power in the Act to enter a discharge of a registered judgment, though it was once the practice to do so.§

Public Act.

21 (20).‡ And be it further enacted, that this Act shall be taken and allowed in all Courts within this Kingdom as a public Act, and all judges, justices, and other persons therein concerned are hereby required as such to take notice thereof, without special pleading the same.

Section 22 (21).‡ Repealed, provided that Members of Parliament should not be Registrars, and *vice versâ*. This is now provided for by General Acts relating to the public service.

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* Rigge, p. 88.
† Sug., 732; Dart, 770.
‡ See note to p. 29.
§ Rigge p. 87, Wilson, p. 24.

THE MIDDLESEX REGISTRY ACT, 1891.

(54 Vic., Cap. 10).

An Act to make temporary Provision for the business of the Middlesex Registry of Deeds. [11th May, 1891.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Transfer of registrar's duties.

1. All powers by the Act of the seventh year of Queen Anne, chapter twenty, and the Acts amending it, vested or exerciseable in or by the registrars or masters therein mentioned collectively, or in or by any of them individually, shall be transferred to and may be exercised by the registrar of the Land Registry, and rules may be made by the Lord Chancellor for carrying this Act into effect.

Rules were made under this power on the 11th of May, 1891, dispensing with deputy-registrars, enabling the registrar's signature to be given by stamping or sealing, and various acts of the registrar to be performed by other officers of the Registry. These are rescinded by Rule 21 of 1892.

Short titles.

2. This Act may be cited as the Middlesex Registry Act, 1891; and the Act of the seventh year of Queen Anne, chapter twenty, may be cited as the Middlesex Registry Act, 1708.

THE LAND REGISTRY (MIDDLESEX DEEDS) ACT, 1891.

(54 & 55 Vic., Cap. 64).

An Act to transfer the Middlesex Registry of Deeds to the Land Registry, and provide for the conduct of the business thereof. [5th August, 1891).

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Transfer of Middlesex Registry to Land Registry.

1. The Middlesex Registry shall be transferred to the Land Registry established under the Land Transfer Act, 1875, and shall form part of that office, and be conducted by the Registrar of that office accordingly, and all powers (*a*) and indemnities (*b*) subsisting and all penalties (*c*) imposed for the purposes of the Land Transfer Act, 1875, shall be available for the purposes of the Middlesex Registry Act, 1708, and the Middlesex Registry Act, 1891.

(*a*) The principal powers here referred to are :—

Rectification of the register under order of Court, secs. 95, 96, 97.

Framing and promulgation of forms, sec. 108.

Administration of oaths, summoning of witnesses, and compelling discovery, sec. 109.

Description and powers of "The Court," secs. 114 to 117, and, perhaps,

Registrar's power to state a doubtful case for the opinion of the Court, secs. 74 to 77.

Provisions as to applications by married women, infants, idiots, and lunatics, secs. 87, 88.

(*b*) The registrar and other officers are not liable to proceedings for acts *bonâ fide* done in supposed pursuance of Act, sec. 86.

(c) For suppression of deeds or evidence, sec. 99, for fraudulently procuring entry, erasure or alteration in register, sec. 100; for false declarations, sec. 101; *see* also secs. 102, 103; for refusal to attend registrar's summons, sec. 110. Act of 1891, Secs. 2 to 6.

2.—(1) Subject to any rules made under this section, the regulations in the First Schedule to this Act shall be observed in the Middlesex Registry. Rules.

(2) The provisions as to making rules contained in sections one hundred-and-eleven and one hundred-and-twelve of the Land Transfer Act, 1875 (except so much of those provisions as requires regard to be had to the value of any land or charge in fixing fees), shall extend to the making of rules for the purposes of the Middlesex Registry Act, 1708 (*a*): Provided that the charges of solicitors which are regulated under the Solicitors Remuneration Act, 1881, shall not be altered by any rule made under this section.

(3.) The Middlesex Registry Act, 1708, shall be construed as if the directions contained in any such rules and regulations were embodied in that Act (*b*).

(a) See Rules of 8 Feb., 1892, *post* p. 44.

(b) This meets any possible objection raisable on the words "in such manner as is *hereinafter* directed," and "such memorial . . . . as by *this Act* is directed," in sec. 1 of the Act of 1708.

Secs. 3 and 4 refer merely to the transfer of buildings, effects, and moneys, of the Middlesex Registry to the proper public departments, and make personal provisions for the existing officers of the Middlesex Registry.

5. Except on the application of the mortgagee named in the mortgage, his executors or administrators, it shall not be necessary for the registrar to note on the register the discharge of a mortgage in any other manner than by registering a memorial of the instrument of discharge. Discharges of mortgages.

This refers to sec. 17 (16) of the Act of 1708, *which see*, and note (*c*) thereto.

6. It shall not be necessary for the validity of any judgment, Memorials as to

Act of 1891, Secs. 6 to 8.

statute, or recognizance, that a memorial thereof be registered under the Middlesex Registry Act, 1708.

judgments, &c., not to be registered.

This repeals sec. 19 (18) of the Act of 1708.

Existing judgments registered in the Central office, but not in Middlesex, will cease to be defective on this account as from 1 April, 1892.

Existing judgments already registered in Middlesex will not be affected in any way.

Future judgments, and existing judgments registered neither in Middlesex nor in the Central office, will, on and after 1 April, 1892, be subject to the Judgment Acts only.

Of course it must be remembered that land is now only affected when actually delivered in execution, the writ of execution being registered under the Land Charges Registration and Searches Act, 1888.

Repeal.

7. The Acts mentioned in the Second Schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of the said schedule mentioned.

Short title and commencement.

8. This Act may be cited as the Land Registry (Middlesex Deeds) Act, 1891, and shall come into operation on the first day of April, One thousand eight hundred and ninety-two.

As to memorials prepared, or in course of preparation, on the 1st of April, 1892, according to the former manner, *see* Regulation 2 of the 24th of March, 1892, p. 52.

SCHEDULES.

FIRST SCHEDULE.

[*The following paras.* 1 *to* 9 *follow the Act of* 1708, *except where otherwise noted*]. Act of 1891, Schedule 1.

(1.) Every memorial to be registered shall be put into writing (*a*) on paper (*b*), of a size and quality to be prescribed by the registrar (*c*), and brought to the Registry (*d*).

(*a.*) A memorial, the body of which was lithographed, was held good in *Regina* v. *Registrars of Middlesex*, 7 Q.B. 156 (Denman, C.J. and Ct. 145), S.C. as *ex parte Ivemey*, 9 Jur. 371; and the Interpretation Act, 1889, sec. 20, extends the term "writing" to printing, lithography, photography, and other modes of representing or reproducing words in visible form, and is retrospective.

(*b.*) "Vellum or parchment," under sec. 5 of the Act of 1708.

(*c.*) (*d.*) See Rule 2 of 1892.

(2.) In case of deeds and conveyances, the memorial shall be under the hand (*a*) *and seal* of some or one of the grantors, or some or one of the grantees, his or their heirs, executors, or administrators, guardians, or trustees,(*b*) attested by one witness (*c*), such witness where practicable (*d*) to be a witness to the execution (*e*) of such deed or conveyance ; *which witness shall upon his oath* (*f*) *prove the signing and sealing of such memorial, and, where such witness is a witness to the deed or conveyance, the execution of the deed or conveyance mentioned in such memorial.*

The words in italics are superseded by Rule 5 of 1892.

(*a*) The seal of a corporation suffices for signature, *Doe d. Cutlers' Company* v. *Hogg*, 1 B. and P., N.R. 306 (1805).

(*b*) Where an heir, executor, &c., executes, it should be stated in a note to the memorial, and evidence by statutory declaration, production of probate or other sufficient evidence produced as to the fact. It will be noticed that an assign cannot execute a memorial, so that cases will sometimes still arise where registration will become impossible after delay.

(*c.*) "Two witnesses" in the Act of 1708, sec. 5.

(*d.*) "Where practicable" is new. *See* Rule 6 of 1892, as to this.

(*e.*) There seems to be no decision as to whether it is necessary for the witness to see the same party sign the memorial and execute the deed, though

Act of 1891, Schedule 1, paras. 3 to 5.

obviously the appropriate course. Rigge, pp. 74, 75, says it is not necessary, but this should be cautiously accepted.

(*g.*) "Before one of the registrars or masters, or before a Master in Chancery, ordinary or extraordinary," are inserted here in the Act of 1708, s. 5. But it was held in *The Queen* v. *The Registrar of Deeds, &c.* (21 Q.B.D. 53, Cotton, Bowen and Fry, L.J.J. 1888) that the memorial could also be proved before a Commissioner for Oaths, and the Commissioners for Oaths Act, 1889, sec. 1, sub-sec. (2), expressly provides to the like effect. The oath can also be taken abroad, *ibid* sec. 3, sub-sec. 1.

(3.) In case of wills the memorial shall be under the hand *and seal* of some or one of the devisees (*a.*), his or their heirs, executors, or administrators, guardians, or trustees (*b.*), attested by one witness (*c.*), *who shall upon his oath* (*d.*) *prove the signing and sealing of such memorial.*

The words in italics are superseded by Rule 5 of 1892.

(*a.*) An executor, as such, does not seem to be a "devisee" within the meaning of this para., though he is the person in whom trust and mortgage estates are vested under the Conveyancing Act, 1881, sec. 30. A bare trustee, whose estate vests by operation of law in the beneficiary, would seem a devisee for the purposes of this para., if necessary. It would also seem that any person taking a beneficial interest, even though contingent, might be considered to be a devisee for the purpose of signing a memorial effectually.

(*b.*) *See* note (*c.*) to para. 2.

(*c.*) "Two witnesses" in the Act of 1708, and *see* note above on "The Memorial," p. 6, and Rule 6 of 1892.

(*d.*) "Before the said registrars or masters or Master in Chancery," &c., appeared in the Act of 1708.

(4.) *A certificate of such oath shall be endorsed on the memorial and shall be signed by the person before whom the oath has been taken.*

The oath being superseded by Rule 5 of 1892, this certificate is also consequently abolished.

In registrations before 1 April, 1892, it is doubtful whether an informality in the oath would vitiate the registration, the direction being merely for the guidance of the registrar. Re *Monsell*, 5 Ir. Ch. Rep. (Brady L.C.Ir. 1856).

Supposing the oath proved untrue in a material particular, it would seem that the registration might be questionable. In an Irish case on a similar point, *Delacour* v. *Freeman*, 2 Ir. Ch. Rep. 633 (Smith, M.R. 1853), it was decided that the registration was effectual, but only on the words of the Irish Act, which were that on production of an affidavit, the registrar "shall" register "anything in this Act to the contrary notwithstanding." No such words occur in the Middlesex Act.

The provisions of the above 4 paragraphs are the same as section 5 of the Act of 1708, except where otherwise noted.

(5.) Every memorial of any deed, conveyance, or will shall contain the day of the month and the year when such deed, conveyance, or will bears date, and the names and additions of all the parties to such deed or conveyance, and of the devisor or testatrix of such will, and of all the witnesses to such deed, conveyance, or

will, and where practicable (*a.*) the places of their abode, and shall express or mention the lands and hereditaments contained in such deed, conveyance, or will, and the names of all the parishes (*b.*) within the county where any such lands or hereditaments are lying and being that are given, granted, conveyed, devised, or any way affected or charged by any such deed, conveyance, or will, in such manner as the same are expressed or mentioned in such deed, conveyance, or will, or to the same effect (*c*).

(*a.*) "Where practicable" does not occur in the Act of 1708, and *see* note above on "The Memorial," page 6, and Rule 6 of 1892.

(*b.*) "Parish" means "a place for which a separate poor-rate is, or can be, made, or for which a separate overseer is, or can be, appointed." Interpretation Act, 1889, sec. 5.

(*c.*) *See* para. 9 below, also Rule 3 of 1892, and Regulation of 19 April, 1892.

(6.) Every such deed, conveyance, and will, or probate of the same, of which such memorial is so to be registered as aforesaid, shall be produced to an officer of the Registry at the time of registering such memorial.

It seems probable that this production to the registrar at the time of registration is essential. So that if the original instrument be lost registration is impossible. *Honeycombe* v. *Waldron*, 2 Stra. 1064 (Hardwicke, C.J. 1737). In an American case a registration made from a copy of a deed instead of from the original was held void without enquiry as to accuracy—*Lewis* v. *Baird*, 3 McLean 56 (U.S. Circuit Court 1842).

(7.) A certificate shall be endorsed (*a.*) by an officer of the Registry (*b.*) on every such deed, conveyance, and will, or probate thereof, and shall mention the day (*c.*) on which such memorial is so registered, and shall also express in what book (*d.*) and under what number the same is registered, and the said certificate shall be signed by an officer (*b.*) of the Registry, which certificate shall be taken and allowed as evidence of such respective registries in all courts of record whatsoever.

(*a.*) Whether the endorsement of the certificate is an essential may be doubted. *Eyre* v. *Dolphin*, 2 Ball and B. (Manners, L.C.Ir. 1813).

(*b.*) "Said registrar or master" in the Act of 1708.

(*c.*) "Hour and time" *ibid.*

(*d.*) "Page" *ibid.*

(8.) Every memorial (*a.*) shall be numbered, and the day of the month and the year (*b.*) when every memorial is registered shall be entered in the margin thereof (*c.*) and the registrar shall duly file

Act of 1891, Schedule 1, paras. 8 to 10.

every such memorial, in order of time, as the same shall be brought to the Registry, and (*d.*) register the said memorials in the same order that they shall respectively come to his hands (*e.*).

(*a.*) "Every page of such register books and every memorial that shall be entered therein," in the Act of 1708.

(*b.*) "And hour or time of the day," *ibid.*

(*c.*) "Margents of the said register books and in the margents of the said memorial," *ibid.*

(*d.*) "Enter or," *ibid.*

(*e.*) In *Neve* v. *Pennell*, 2 H. and M. 171 (P. Wood, V.C. 1863), this provision was construed very literally. *A.* and *B.*, first and second mortgagees respectively, waited at the office before it opened. They came in together, but B. got up to the registrar before *A.*, and received the number 764 for his memorial, as against 768 for *A's.* This was held to be decisive as to priority. Also *semble* (p. 188), that if two memorials are placed together in registrar's hands, he cannot bracket them, but must decide which ought to be taken first, and that the Court will observe such priority so given unless proved to be corruptly decided.

The provisions of the above paras. 5 to 8 are the same as section 5 of the Act of 1708, except as otherwise noted, and except a portion, referring to Indexes, noted under para. 12 below.

(9.) Where there are more writings than one for making and perfecting any conveyance or security which name, mention, or anyways affect or concern the same lands or hereditaments, it shall be a sufficient memorial and register thereof if all the said lands and hereditaments, and the parishes wherein the same lie, be only once named or mentioned in the memorial or register of any one of the deeds or writings made for the perfecting of such conveyance or security, and that the dates of the rest of the said deeds or writings relating to the said conveyance or security, with the names and additions of the parties and witnesses, and the places of their abodes, be only set down in the memorials and registers of the same, with a reference to the deed or writing whereof the memorial is so registered that contains or expresses the parcels mentioned in all the said deeds, and directions how to find the registering the same.

This is section 7 of the Act of 1708 almost verbatim. The original section was probably meant to meet the case of lease and release and such like modes of assurance only, It does not apply to the simultaneous registration of two deeds relating to the same land (as, conveyance and mortgage), even where part of one transaction, nor, apparently, to endorsed annexed or supplemental deeds, as to which *see* pp. 18 and 53.

(10.) The filing of a memorial shall be the registration thereof required by the Middlesex Registry Act, 1708, and the registers shall consist of the filed memorials arranged or bound in volumes conveniently for reference.

In an American case (*Mumford* v. *Wardwell*, 3 Wallace 423, Sup. Ct. 1867) a grant deposited in a registry, labelled, classified, and folded into a bundle with others, but not bound or threaded in any way, was held to be "registered in a book" within the meaning of a Statute.

(11.) Any person may search any register or index kept in the Land Registry in pursuance of this Act. The registrar, as often as required, shall make searches concerning all memorials in the Registry, and give certificates concerning the same if required.

See Rules 9 to 14, pp. 47-49.

From "the registrar" to "if required" is from sec. 12 of the Act of 1708, substantially unaltered.

(12.) Indexes shall be kept in such manner, and shall contain such particulars as to grantors, land affected, and otherwise, as the registrar may direct.

Sec. 6 of the Act of 1708 provided:—

"That every such register or master shall keep an alphabetical calendar of all parishes, extra-parochial places and townships within the said county with reference to the number of every memorial that concerns the honors, manors, lands, tenements or hereditaments in every such parish, extra-parochial place or township, respectively, and of the names of the parties mentioned in such memorials."

This Parochial Index was kept for a few years separately, but being found of little use in that form, and liable to error owing to the alteration of boundaries, it was combined with the index of names in the form now familiar (Rigge, p. 79). *See* Rule 8 of 1892.

(13.) The registrar may form a consolidated index from the Lexicographical Index to cover such period as he may think advisable, and such index, when made, shall be in substitution for the indexes subsisting at the commencement of this Act for the period covered by such consolidated index.

(14.) Any person deriving title under an instrument (capable of registration under the Acts relating to the Middlesex Registry) which confers on him the right to apply for registration (*a.*) with a possessory title, (*b.*) of the land comprised in it under the Land Transfer Act, 1875, may, at his option, either register a memorial of an instrument under the Acts relating to the Middlesex Registry, or apply for registration with possessory title under the Land Transfer Act, 1875 (*c.*). Such registration shall, when completed, bear the same date as the application, and render unnecessary the registration of the instrument under the Acts relating to the Middlesex Registry.

No fee shall be paid on such application other than the fee for the registration under the Land Transfer Act, 1875 (*d.*), and, if the application is made by a purchaser, no declaration as to possession shall be required.

Act of 1891, Schedule 1, paras. 14, 15.

In the event of an absolute title being afterwards applied for and obtained, allowance shall be made for the fees payable on the registration with possessory title.

See Rule 15, and Form 9.

(*a.*) By sec. 5 of the Land Transfer Act, 1875, it is provided that any person who (i.) has contracted to buy, or (ii.) is entitled for his own benefit at law or in equity, to, or (iii.) is capable of disposing, for his own benefit, of an estate in fee simple in land, whether subject or not to encumbrances, may apply for registration :—subject, in the case of a contract, to the vendor's consent. And, by sec. 68, any trustee for sale, or person having a power of sale, may authorise or consent to a purchaser's application, or may himself apply for registration—with the consent only of the persons (if any) whose consent is necessary for a sale, and may charge the costs to the trust.

(*b.*) Registration with possessory title involves no official examination. Its effect is not retrospective, but it makes the register conclusive as to all dealings subsequent to registration, thus gradually acquiring the characteristics of an absolute title. Sec. 8 of the same Act.

(*c.*) For the form and general requisites of an application, *see* Rule 15 of 1892, and Form 9.

(*d.*) These fees are as follows :—

	£	s.	d.
Not exceeding £50	0	2	6
Exceeding £50 and not exceeding £100 . . .	0	5	0
Thence up to £500 at 2/6 for each additional £100, making for £500	0	15	0
Thence up to £1000 at 3/ for each additional £100, making for £1000	1	10	0
Thence to £2000	2	10	0
Thence to £3600	3	10	0
Thence to £10,000 at 10/ for each additional £1000, making for £10,000	7	0	0
Thence up to £100,000 at 5/ for each additional £1000, making for £100,000 (or over) . . .	29	10	0

Fuller information as to the fees and procedure on future dealings with registered titles can be obtained at the Registry. It would appear to be worth the serious attention of careful solicitors to consider, whether the simplicity of transactions and improved searching system in use under the Land Transfer Act, together with the ultimate prospect of a practically absolute title, at little or no initial expense, do not render the adoption of the mode of registration here offered, a preferable course to continuing the system of deed registration, which, however slightly, must always somewhat increase the cost and trouble of conveyancing, and which in small cases, and where searches are heavy, constitutes a burden very disproportionate to the benefit obtained. Further, the Registry under the Land Transfer Act is absolutely private (*see* sec. 104), instead of being public, as the Middlesex Registry is.

(15.) The exercise by the registrar of his powers under this schedule shall be subject to the approval of the Lord Chancellor.

SECOND SCHEDULE.

Repeals.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
7 Anne, c. 20.	The Middlesex Registry Act, 1708.	Section two, from "in manner following" to the end of the section. Sections three to seven, eleven to fourteen, sixteen, nineteen,* twenty* and twenty-two.*
25 Geo. 2. c. 4.	An Act for appointing the deputy or secondary of the chief clerk to inrol pleas in the King's Bench called the master of the King's Bench Office one of the registrars or masters for the enrolment of deeds, wills, and other conveyances in the county of Middlesex, in the place and stead of such chief clerk.	The whole Act.
7 Will. 4. & 1 Vict. c. 30.	An Act to abolish certain offices in the Superior Courts of Common Law, and to make provision for a more effective and uniform establishment of officers in those courts.	Section twenty-eight.†
5 & 6 Vict. c. 103.	An Act for abolishing certain offices of the High Court of Chancery in England.	Section thirty-four.†
22 & 23 Vict. c. 21.	An Act to regulate the office of Queen's Remembrancer, and to amend the practice and procedure on the revenue side of the Court of Exchequer.	Section seven.‡

* See note to page 29.
† These provide for the appointment of future registrars.
‡ Provides for certain payments to Queen's Remembrancer.

THE LAND REGISTRY (MIDDLESEX DEEDS) RULES, 1892.

ISSUED 8TH FEBRUARY, 1892, IN PURSUANCE OF SECTION 2 OF THE LAST ACT.

Interpretation.

1. In these Rules the Land Registry (Middlesex Deeds) Act, 1891, is referred to as the Act of 1891, and that Act and the Middlesex Registry Act, 1708, are referred to together as the Middlesex Deeds Acts; and the same mode of citation may be used in all forms and proceedings under the said Acts.

All forms and proceedings should be headed "Land Registry—Middlesex Deeds Acts."

As to Memorials Generally.

2. Memorials and certificates of satisfaction of mortgages, shall be written or printed on the best white loan paper, 16 inches long by 10 inches wide, with an inner margin 2 inches wide and an outer margin $\frac{3}{4}$ of an inch wide (*a*), and shall be left at the office by hand (*b*), and shall bear Land Registry stamps for the amount of the fees, and shall be accompanied by the original instruments and mortgages respectively (*c*).

(*a*) By Rule 20 these forms are to be on sale at the office. As the memorials are to be filed, and will themselves form the register, any variation from the above requirements in respect of size, margins, or quality of paper will be likely to lead to the rejection of the memorial.* The memorial should be written on both sides of the paper. Followers for long memorials will also be obtainable. Where more than one sheet is used, the sheets should be initialled by the party executing, and the witness, and should be numbered consecutively.

(*b*) Country solicitors should send memorials to their London agents if not convenient to attend themselves. Memorials sent by post to the Registry will be returned to the sender unregistered. As to receipt, *see* p. 9.

* The paper selected is stated to be "Best white loan paper, hand made, No. 72."

(*c*) This Rule is new as to satisfaction of mortgages, and should be borne in mind. There appears to be no authority to endorse any note or certificate of vacation on a mortgage, except under the Building Societies and Friendly Societies Acts of 1874 and 1875, secs. 42 and 16 respectively.

3. The particulars, required by paragraph 5 of the First Schedule of the Act of 1891 to be inserted in memorials, shall only be required in so far as the same appear from the original instrument, except that the address and description of the witness to the memorial shall in all cases be inserted therein.

It is understood that this Rule will relieve from a frequent difficulty in registering wills, where the abodes of the witnesses are often omitted.

There is reason to believe (*see* para. 5 of 1st Sch. to Act of 1891) that this Rule is only declaratory of the existing law, but the practice of the office for many years has proceeded on a stricter interpretation of the corresponding provision in sec. 6 of the Act of 1708.

4. Where the original instrument contains a plan, a copy thereof (or of so much thereof as is referred to in the memorial) shall be drawn on the memorial (*a*), unless owing to its size this cannot be done (*b*); in which case a tracing on linen (*c*) signed by the person signing the memorial and by the witness, shall be left with the memorial and filed in the office. No other copy shall be required.

As to supply of plans for memorials by the office, *see* note, p. 52.

(*a*) Observe that in these cases a tracing would not comply with the Rule, and that the extra tracing hitherto required for the copy memorial will not be wanted.

(*b*) This will doubtless be construed with a reasonable discretion as to margins.

(*c*) Observe that the tracing is not to be on paper, as heretofore.

5. It shall no longer be necessary to seal any memorial, or to verify by oath the signing thereof or the execution of the instrument to which it refers; but the signing of the certificate of satisfaction of a mortgage shall continue to be verified by oath as heretofore.

As to certificate of satisfaction *see* the Act of 1708 sec. 17 (16), and notes, the Act of 1891, sec. 5, and Forms 4 and 5.

6. The witness to the memorial shall be a witness or one of

the witnesses (if any) to the original instrument (*a*), unless at the date of the memorial every such witness is dead or absent from the United Kingdom or cannot be found, or some other sufficient cause (*b*) exists to prevent it. In such cases a statutory declaration shall be furnished, and left with the memorial at the Registry, stating the reason why the witness to the memorial is not one of the witnesses to the instrument (*c*).

(*a*) In the case of wills this Rule is not considered to apply where the probate is produced.

(*b*) The sufficiency of the cause is apparently left in the first instance to the registrar to decide upon. It may be supposed that illness, or refusal to attest, or even expense (especially in a small matter), would form sufficient cause within the meaning of the Rule.

(*c*) *See* Form 16 for an example of such a declaration. The declaration should either be endorsed on the memorial or made on paper of the same size and quality so as to admit of being filed with it, and should be made by the applicant or his solicitor.

7. Every memorial shall be compared by an officer of the Registry with the instrument to which it relates; and any clerical, trifling, or obvious errors may be corrected by him. (*a*.) But if any error is found which appears to the officer unsuitable for such correction, its nature shall be notified to the person who has left the memorial in the office, and (unless he satisfies the registrar that it is sufficient) the memorial may be returned and the registration be cancelled, the fee paid being retained, but no fee charged on a substituted memorial.

(*a*.) This Rule being read as part of the Act of 1708 (as provided by sec. 2 sub-sec. 3 of the Act of 1891) renders corrected memorials valid. It will be very seldom, however, that errors in the essential requisites of the memorial can be thus corrected without communication with the applicant. Memorials are usually made from the draft deed, and a discrepancy between the engrossments is consequently by no means decisive against the memorial, for it may be that the deed is wrong, and the memorial right as in *Mill* v. *Hill*, 3 H.L.C 828. It is understood that in cases where the needed correction is of a substantial character, or involves any question of doubt, but still appears to be such as may be made without disfiguring the memorial, the attention of the applicant will be drawn to the matter, and the suitable correction suggested to him when he returns to take up the deed. On his written authority (shewn by his signing the corrected document) the necessary correction of the memorial will be made for him by an officer of the Registry for a fee of 1s. per folio. This procedure will, in effect, continue the practice which for a long time past has been adopted in the Registry

for the convenience of applicants, and which, now that the oath is abolished, appears unobjectionable. The remaining portion of the Rule will only come into force in cases where the above procedure is inapplicable. There is, of course, no authority for any correction or alteration of a deed (even in the minutest particular) being made or permitted in the Registry. But as to this, *see* above pp. 7, 8.

Indexes.

8. The index known as the Parliamentary Index shall be closed as from the commencement of the index known as the Lexicographical Index on the 1st of January, 1828, and such latter index shall be continued. But the registrar shall have power to introduce such alterations in the mode of keeping the same as he shall from time to time think advisable.

The names of the grantees shall not be included in the Index.

Searches.

9. An ordinary search shall be a search made against one name (*a*), on one day by a person (*b*) not an officer of the Registry, in any of the indexes, books, or documents open to public inspection (*c*.).

The requistion for a search shall state the nature of the search, and the name against which it is to be made, and shall bear Land Registry stamps for the fee and be signed by the applicant (*d*.).

(*a*.) The Act of 1708 contains no precise definition of a search. Formerly a search was permitted for a single fee against more than one name, if all the persons included in it were entitled in the same interest, *e.g.*, as co-trustees. This practice is now to cease.

(*b*.) Reasonable assistance in searching would not seem to be precluded by the use of the singular number here.

(*c*.) The practice of "looking up references" on a different day to that on which the index is searched, paying only a single search fee for any number of names affected, seems to be precluded by this regulation. It would seem that the looking up of memorials, if made on a different day to that on which the index is searched, or in pursuance of an official certificate of search, will require a search fee for each party whose grants are being inspected, and the requisition should be filled up on this assumption.

(*d*.) Form 6.

10. An official search shall be a search made by an officer

of the Registry, in the index only, for certain specified years, for all entries therein, against one name, affecting lands in a specified parish.

See general instructions as to official searches pp. 5, 6.

11. The requisition for an official search shall state the surname and christian name of the person against whom it is to be made, the parish, the years over which it is to extend, and the day on which the certificate is required, not being less than six clear days from the leaving of the requisition in the office. The requisition shall be signed by the applicant, and shall bear Land Registry stamps for the amount of the fee.

See Form 7, and fee order, p. 51. It will be observed that the fee depends partly on the number of years searched, and partly on the number of entries found. Sometimes a very large number of entries are found under one name. The names of builders, lords of manors, and other large landowners, and land companies, are the most frequent sources of difficulty in this respect. This should be remembered in applying for official searches.

12. An official certificate of the result of every official search shall be issued from the Registry to the applicant, and a copy or other sufficient record of the same, shall be kept in the office.

See Form 8.

13. Applications for official searches shall be subject to the following provisions:—

(*a.*) That the search shall not be such as for any sufficient reason shall appear to be impracticable to complete.

(*b.*) That the Lord Chancellor may make regulations limiting or extending the period to be covered by official searches.

The system being tentative only at first, these regulations seem necessary for the protection of the Registry from an unexpected demand for official searches, arising before a sufficient staff has been organised to meet it.

14. Where a person obtains an official certificate of search he shall not be answerable in respect of any loss that may arise from error therein. Where the certificate is obtained by a solicitor acting for trustees, executors, or other persons in a fiduciary position those persons also shall not be so answerable.

Registration under the Land Transfer Act, 1875.

15. Every application (*a.*) made under paragraph 14 of the First Schedule to the Act of 1891, for registration of a possessory title under the Land Transfer Act, 1875, in lieu of registration of a memorial under the Middlesex Deeds Acts, shall be signed by the applicant or his solicitor, and shall bear Land Registry stamps for the fee, and shall be left in the office, together with the instrument which confers the right to apply, and a deposit of 10*s.* to meet expenses (*b.*)

(*a.*) *See* Form 9, and notes to para. 14 of the First Schedule to the Act of 1891.

(*b.*) The only expenses worth mentioning appear to be the preparation of a plan of the property on the ordnance map. If the property is already shewn on the map the applicant should procure the sheet *uncoloured* (on the largest scale published), and should mark the boundaries with a red edging or point them out to the office surveyor. If the boundaries do not appear on the map as published, a surveyor should put them in, or, if desired, the ordnance survey will complete the plan for the applicant at an estimated expense.

A small plot of land has been registered at a total cost to the applicant of 12s. 6d.; of which 5s. was incurred in fees and duty on a declaration, which is now remitted.

The application should be left at the Land Registry, not at the Middlesex Deeds Department.

Office Copies.

16. Office copies of, or extracts from, all books and documents in the office open to public inspection, shall be furnished on the written application of any person.

It is understood that persons searching the register have not the right to make copies for themselves of any entries. Short notes may, however, be made subject to the Registrar's permission.

Miscellaneous.

17. Any indorsement certificate or signature to be made or given by any officer of the Registry, may be made or given by

stamping, sealing, or writing, as the registrar may by regulation direct, and any act required by the Middlesex Deeds Acts to be done by the registrar may be done by such officer of the Registry as the registrar may for that purpose appoint.

See Regulation 3 of 24 March, 1892, page 53.

18. The forms in the schedule hereto (*a.*) with such variations as circumstances may require, shall be used in all cases to which they refer (*b*).

(*a.*) *See* Forms 1 to 9 (pp. 53 to 60).

(*b.*) Apparently the forms of memorials will necessarily admit of considerable modification, especially in the case of wills. But the "Particulars for the Index" will probably be insisted on in all cases, and *see* adapted forms 12 to 15.

19. The registrar may at any time issue new forms to be used instead of, or in addition to, those in use, and generally shall have a discretionary power in regard to all formal and administrative matters.

See Regulations 1 and 2 of 24 March, 1892, page 52.

20. Land Registry stamps and all forms in use in the office shall be obtainable at the Registry.

21. These Rules may be cited as the Land Registry (Middlesex Deeds) Rules, 1892: they shall come into operation on the first of April 1892, and shall be in substitution for all rules relating to the Middlesex Registry subsisting before the passing of the Act of 1891.

Rigge p. 96. (*n.*) mentions some Rules then existing (1798) relating to hours of attendance, and acceptance for registration of office copies of wills, and of certificates to discharge judgments. No trace of these Rules now remains. The present substitution includes the Rules of 11 May, 1891, mentioned p. 33, as the Act of 1891 referred to was not passed till 5 August.

The forms required for above are given on pages 54–66.

FEE ORDER UNDER THE LAND REGISTRY (MIDDLESEX DEEDS) ACT, 1891.

ISSUED 8TH FEBRUARY, 1892, IN PURSUANCE OF SECTION 2 OF LAST ACT.

	s.	d.
1. Registration of a memorial, or vacating an entry of a mortgage (except under the 42nd section of the Building Societies Act, 1874)*	5	0
2. Vacating an entry of a mortgage under the said section of the last-mentioned Act*	2	6

The above charges include the administration of the oath, when required.

	s.	d.
3. Ordinary search, per name	2	0
4. Official search :—		
For 10 years or less	7	6
For every further 5 years or less	2	6
If more entries are found than at the rate of 10 for every 5 years, then for every 5, or part of 5, extra entries	1	0

Note.—Provision may be made for this latter payment by deposit of money at the Registry.†

	s.	d.
5. Statutory declaration taken in the office . . .	1	6
6. Exhibit thereto	1	0
7. Correction of a memorial in the office, per folio .	1	0

* The 16th section of the Friendly Societies Act, 1875 sub-sec. 8, will also, doubtless, be considered to be included here.

Or, if preferred, the extra stamps can be affixed by the applicant when the certificate is taken out.

	s.	d.
8. Correction of a plan, per quarter of an hour (or less) employed	1	0
9. Return of instrument (if required) within 24 hours of its being left in the office	2	6

All the above fees are inclusive of stationer's charges.

10. Office copy or extract* :—

For every 100 words.	0	6

Together with a charge, where a plan is required, of 1s. for every quarter of an hour (or less) employed in its preparation.†

* This fee seems to be exclusive of the 1s. Inland Revenue stamp which will, presumably, be paid by the applicant.

† Copies of plans needed for memorials have hitherto been supplied by the office, if required. These will probably be supplied in future at the same rate as here prescribed for office copy plans.

Impressed and Adhesive Stamps.

By an order of the Treasury dated 27th April, 1892, under the Public Offices' Fees Act, 1879, secs. 2 & 3, it is provided that the fees above numbered 1, 3 & 4, must be paid in impressed stamps, adhesive stamps being added where these are insufficient in amount; and that all other fees may be paid either in impressed or adhesive stamps. The adhesive stamps to be those in use for the purpose of the Land Registry. Forms are sold at the office and at Somerset House duly stamped in accordance with this Rule.

REGULATIONS of March 24, 1892.

1. The Middlesex Deeds Department shall be open to the public from 10 till 4, except on Saturdays, when it shall be open from 10 till 2.

Memorials and Certificates of Satisfaction of Mortgages shall be received for registration between the hours of 11 and 3 only, and on Saturdays from 11 till 2.

2. Any Memorial prepared or in course of preparation before the 1st of April, 1892, may be registered at any time

before the 1st of July following, if in accordance with the Middlesex Registry Act, 1708, and the practice prevailing before the said 1st of April.

The fee Order of 11th February,* 1892, shall apply to such registrations, and the fees shall be paid in Land Registry stamps.

The registration shall be effected in such manner as the Registrar shall deem most convenient.

3. The endorsements, certificates, or signatures referred to in Rule 17 of the Land Registry (Middlesex Deeds) Rules, 1892, shall (unless otherwise directed by the Registrar) be made or given by stamping, and any act required by the Middlesex Deeds Acts to be done (as referred to in the said rule) may be done by the acting chief clerk of the Middlesex Deeds Department, and such other officer as the Registrar may from time to time authorize.

* Presumably 8th February is here intended.

REGULATION OF APRIL 19, 1892.

The following Instruction shall be substituted for the note to Form 1 of the Land Registry (Middlesex Deeds) Rules, 1892 (Memorial of a Deed), relating to descriptions of land in endorsed, annexed, and supplemental deeds and recitals:—

> Where the description of land in an endorsed or annexed deed is made by reference to that contained in the prior deed, or (in any case) to a recital, the description contained in such prior deed or recital shall also be set out in the memorial.
>
> Except that in the case of an endorsed or annexed deed, where a memorial of the prior deed has been registered, a reference to the year, book, and number of its registration shall be sufficient without setting out the full description contained in such deed.

For examples, *see* Forms 12, 14, 15.

FORMS AND PRECEDENTS.

Forms 1 *to* 9 *are the forms in the Schedule to the Rules of* 1892.

FORM 1.

MEMORIAL OF A DEED (*a.*)

Land Registry. Middlesex Deeds Acts.

Particulars for the Index.

Grantor's Surname (*b*).	Grantor's Christian Name.	Parish* (*c*).

*[If named in the deed].

Date of deed :—

Parties :—

[As in the deed.] Description of lands :—(*d.*)

Witnesses to execution of deed :—(*e.*)

Signature of grantor or grantee.

Signature of witness to signing of memorial.

Address and description (*f.*)

N.B.—Instrument to be delivered to (*g.*)

NOTE.*—The memorial should be written on both sides of the paper, and otherwise according to the provisions of Rule 2. Usually (*h.*) the "Description of lands" should commence about the middle of the front of the form, the "Witnesses to execution of deed" and following matters being placed low down on the back.

NOTE.*—*See* Regulation of 19th April, 1892, p. 53.

(*a.*) This is intended for all documents made between two or more parties.

(*b.*) The grantors should include all persons (being parties to the deed) from whom any estate or authority moves, or whose interest in the land is diminished or prejudiced by the deed.

If the grantor's name is wrongly engrossed in the deed, both forms should be inserted here.

(*c.*) The parish in which the land is situate is, of course, intended.

If a general description occurs, the words "general description" may be written in this column instead.

(*d.*) As to the proper way to fill in the description of lands, *see* separate note, p. 6 & 7 on "the Memorial."

(*e.*) The witnesses should be entered separately, thus, "*A. B.*, of, &c. witness to execution by the said *C. D.*," and so on.

Where a party's name is wrongly engrossed in the deed, add, "wrongly described in the deed as *E. D.*"

(*f.*) The insertion of the address and description of the witness either here or in the body of the memorial is obligatory in all cases, *see* Rule 3.

(*g.*) Where the deed is not to be delivered out to the person who brings it, this should be carefully filled in, as the deed will not be delivered to any other person (or firm) than the one named.

(*h.*) This appears to have been inserted with a view to the publication of printed forms with these headings inserted beforehand. Where these headings are not printed (as in the official forms) the memorial should simply follow on without any breaks.

* These notes are appended to the Form in the Rules, and are authoritative.

FORM 2.

MEMORIAL OF A DEED POLL OR INSTRUMENT OF A LIKE NATURE NOT UNDER SEAL (*a.*)

(*Heading and particulars for Index as in Form* 1.)

Date of instrument :—

Grantor :—

Description of lands :—*

*[As in the deed.]

Witness (if any) to execution of instrument :—

Signature of grantee (*b.*)

Address and description.

Witness, &c., and N.B. as in Form 1.

See Notes to Form 1.

(*a.*) This is intended for all instruments made by one party only.

(*b.*) The grantor may also sign, though not so usual.

FORM 3.

MEMORIAL OF A WILL (AND CODICILS) (*a.*)

(*Heading and particulars for Index as in Form* 1, *substituting "Testator" for "Grantor."*) (*b.*)

Date of will :—

Testator :—

Description of lands :—*

*[As in the will.]

Witnesses to execution of will :—

Date of (1st) codicil :—

Description of lands (if different):—

Witness to execution of 1st codicil

(&c. as to 2nd, 3rd, and other codicils if any) :—

Signature of a devisee.

Address and description.

Witness, &c., and N.B. as in Form 1.

See Notes to Form 1.

(*a*.) Where the codicils do not affect the devises of real estate, or only alter the devisees, they need not be registered, apparently, unless needed to show that the person signing is a devisee.

(*b*.) The word "Will" may be entered in the parish column instead of the parish.

FORM 4.

CERTIFICATE OF SATISFACTION OF A MORTGAGE.

Land Registry. Middlesex Deeds Acts.

In the Matter of the Mortgage registered in the year
Book No.

I, (*A.B.*) of, *&c.*, certify that all sums of money owing upon the mortgage above referred to are paid and (*a*) satisfied.

(*Signature of mortgagee.*)

Witnesses, *C.D.*, of, &c.
E.F., of, &c.

Affidavit (*b*.)

The above-named (*C.D.*) and (*E.F.*) severally make oath and say that they know the above-named (*A.B*), that he is to the best of their knowledge and belief the same person (*c*) as the mortgagee (*A.B.*) who is named in the mortgage above referred to, and that they saw him sign the above certificate in token of acknowledgment that all moneys owing upon the said mortgage had been paid.

Sworn, &c.

N.B.—This certificate is sent by
of

(*a*.) Sec. 16 of the Act has "*or* satisfied" and the certificate can of course be modified to suit the case of a mere release without payment.

(*b*.) This is only required when the witnesses cannot conveniently attend and swear in the Registry, for which no fee is now charged.

(*c*.) Where the certificate is signed by an executor or administrator he should be identified as the executor or administrator of the mortgagee—so, too, with *un*incorporated building societies, the persons signing should be identified as the trustees or trustee for the time being.

Form 5.

Affidavit verifying Statutory Receipt on satisfaction of a Mortgage under Section 42 of the Building Societies Act, 1874 (*a*).

(*To be endorsed on the Mortgage after the Receipt.*)

I, (*A.B.*) of, *&c.*, make oath and say that I know the seal of the above-named society, and that I saw the same duly affixed to the above receipt in accordance with the rules of the said society for the time being in force, in token that all moneys due on the within-written mortgage had been paid.

Sworn, &c.

(*a.*) See Form 17 for an affidavit suitable to a Friendly Society's mortgage under the Friendly Societies Act, 1875, sec. 16.

Form 6.

Requisition for an Ordinary Search.

Land Registry. Middlesex Deeds Acts.

I desire to make a search against the following name(s) :—

Surname.	Christian Name.

(*Signature of Applicant.*)

(*Address.*)

(*Date.*)

FORM 7.

REQUISITION FOR AN OFFICIAL SEARCH.

Land Registry. Middlesex Deeds Acts.

I require an official search to be made in the index for the years to inclusive, for all entries appearing therefrom to affect lands in the parish(es) of entered against the following name:—*

Surname.	Christian Name.

The certificate will be required to be ready [*or* to be sent by post] on the of next.†

(If the certificate is to be sent by post, a stamped and addressed envelope must be left with the requisition.)

(*Applicant's signature.*)

(*Address.*)

(*Date.*)

* Only one name is to be included in each application.

† To be not less than 6 clear days from the leaving of the requisition in the office.

This requisition, stamped with the proper stamps for the fee, may be sent by post.

FORM 8.

OFFICIAL CERTIFICATE OF SEARCH.

Land Registry. Middlesex Deeds Acts.

This is to certify that the subjoined list contains all the entries in the index for the years to inclusive, appearing therefrom to affect lands in the parish(es) of entered against the following name :—

Surname.	Christian Name.

To wait till called for by [*or*, to be sent by post to] of

LIST OF ENTRIES.

Year.	Book.	No.	Year.	Book.	No.	Year.	Book.	No.

Seal of Search Department with date.

FORM 9.

APPLICATION TO REGISTER A POSSESSORY TITLE UNDER THE LAND TRANSFER ACT, 1875, IN LIEU OF A MEMORIAL UNDER THE MIDDLESEX DEEDS ACTS (*a.*)

LAND REGISTRY.

Land Transfer Act, 1875, *and Middlesex Deeds Acts.*

A.B.,
of
hereby applies to be registered under the Land Transfer Act, 1875, as proprietor with possessory title of the land comprised in the accompanying [conveyance, probate, &c.] in lieu of registration of a memorial of the same under the Middlesex Deeds Acts.

(*Signature of Applicant or his solicitor.*)

(*Address.*)

(*Date.*)

N.B.—This application should bear Land Registry stamps for the (half) *ad valorem* fee fixed by the Fee Order of 16th January, 1889, made under the Land Transfer Act, 1875, and should be accompanied by the instrument referred to, and a deposit of 10*s.* (payable to the office stationer) to meet expenses. Any further instructions that may be necessary will be given by the office.

(*a.*) See para. 14 of the First Schedule to the Act of 1891, and Rule 15 and notes thereto.

FORM 10.

Condition of Sale precluding Objection to Non-registration of Deeds.

The purchaser shall make no objection on the ground that any deeds or documents are not registered, or are only defectively registered, in the Middlesex Deeds Department of the Land Registry. The vendor is not, however, aware of any such omission or defect.

FORM 11.

Condition of Sale offering to procure Registration.

Should any instrument requiring registration in the Middlesex Deeds Department of the Land Registry appear to be unregistered, or defectively registered, the vendor will, if practicable, rectify such omission or defect at his own expense [*or* the expense of the purchaser].

FORM 12.

Variation of Form 1 *for an Indorsed Deed.*

(*Commencement and particulars for Index, as in Form* 1.)

Date, 1 April, 1892.

Endorsed on a deed dated 10 July, 1891, made between *A.B.*, of, *&c.*, of the one part, and *E.F.*, of, *&c.*, and *G.H.*, of, *&c.*, of the other part. Registered 1891. B. 30. No. 420 [*or*, (*if the prior deed be not registered*) "affecting All ( )" *description verbatim as in the within-written deed, see p.* 18].

Parties, 1. Within-named *E.F.*

2. *L.M.*, of, *&c.*, and *N.O.*, of, *&c.*

Description of Lands:—

All the hereditaments comprised in the within-written indenture [*or otherwise, according to the words of the deed*].

(This form can easily be varied for an annexed deed).

FORM 13.

Variation of Form 1 *for a Supplemental Deed.*

(*Commencement and particulars for Index, as in Form* 1.)

Date, 12 April, 1892.

Supplemental to a deed dated 10 November, 1891, made between *A.B.*, of, *&c.*, *&c.* [*Only the particulars appearing from the supplemental deed itself should be inserted*].

And to a deed dated (*&c., as last.*)

Parties, 1. Above-named *C.D.*

2. Above-named *E.F.* & *G.H.*

3. *K.L.*, of, *&c.*

Description of Lands :—

All the hereditaments comprised in the above-mentioned principal indentures [*or as the case may be*].

FORM 14.

Variation of Form 1 *for Parcels by reference to a Recital.*

(A Simple Case.)

(*Commencement and particulars for Index, as in Form* 1.)

Date, 9 March, 1892.

Parties 1. *A.B.*, of, *&c.*, and *C.D.*, of, *&c.*

2. *E.F.*, of, *&c.*

3. *G.H.*, of, *&c.*, and *I.J.*, of, *&c.*

Description of Lands :—

All the hereditaments comprised in the said recited deed.

The said recited deed is a deed dated 30th May, 1888, made between *K.L.* of, *&c.*, *&c.*, affecting All [*decription verbatim as in recital*].

FORM 15.

(*Same as last—a complicated case.*)

(*Commencement, particulars for index, date, and parties, as in last form.*)

Description of Lands:—

"All and singular the hereditaments and premises comprised in the said recited agreements of 20 November, 1889, and 29 September, 1875, the said recited lease of 2 December, 1886, and the said recited parol agreements, or such parts thereof as were assigned to the said *A.B.* by the said recited assignment of 30 January, 1892.

And also all and singular the pieces or parcels of land comprised in and demised by the said recited agreement of 30 January, 1892."

The said recited documents are as follows:—

1. Lease of 1 September, 1874, affecting All [*description verbatim as in recital, but omitting term, rents, covenants, option to purchase (if any), &c.*]
2. Agreement of 13 January, 1885, for surrender of said lease, and for new lease of same premises, except "such parts as had been sold to the Great Eastern Railway, and except such further portion (if any) as might be taken by the said railway company."
3. Agreement of 20 November, 1889, for surrender of said agreement and for new lease of same premises, except "such parts as had been sold, and except such further parts (if any) as might thereafter be taken by any railway company or public body."
4. Lease of 2 December, 1886, affecting All (*description as above, recital* 1).
5. Agreement of 29 September, 1875, for tenancy of All (*description as above, recital* 1).
6. Deed of 2 September, 1891, affecting All (*description as above, recital* 1—*this deed is a sale of the tenant's interest in parts of the above, by a new and disconnected description, but this fact need not be stated*).

7. Parol agreements for tenancies of (*description as above recital* 1).

8. Assignment of 30 January, 1892, affecting (*inter alia*) the land comprised in the said agreements of 20 November, 1889, and 29 September, 1875, in the said lease of 2 December, 1886, and in the said parol agreements, except such parts as were comprised in the said deed of 2 September, 1891.

9. Agreement of 30 January, 1892, for tenancy affecting (*description as above*, *recital* 1), "except all timbers, trees, and the tops and lops thereof, except willows."

FORM 16.

Declaration in support of a Memorial witnessed by a Person not a Witness to the Deed.

A. (*Where endorsed on the memorial*).

I, *A.B.*, of, *&c.*, do solemnly and sincerely declare—

(1.) That I have made enquiry for *C.D.*, *E.F.*, *G.H.*, *K.L.*, and *M.N.*, the attesting witnesses to the above-mentioned deed, and I am informed and believe that the said *C.D.* is dead, that the said *E.F.* is resident in America, that the said *G.H.* is dangerously ill, and unable to attest or verify any legal document, and that the said *K.L.* is resident at Sneem, in the county of Kerry, in Ireland, and could not attest and verify the execution of the said memorial without a disproportionate expense.

(2.) That I have applied to the said *M.N.* to attest and verify the execution of the said memorial, and he persistently and unreasonably refuses to do so.

(3.) That I have made enquiry as the genuineness and validity of the said deed, and have not been able to discover anything of a suspicious nature in connection therewith.

(4.) I know the said (*person executing memorial*) and his handwriting, and I am satisfied that he is the same person as the who was a party to the said deed.

B. (*Where separate from the Memorial*).

Land Registry—Middlesex Deeds Acts—

In the matter of a memorial of a deed dated , and made between (*continue as before*).

FORM 17.

Affidavit verifying Statutory Receipt on Satisfaction of a Mortgage under Sec. 16 *of the Friendly Societies Act*, 1875.

(*To be endorsed on the Mortgage after the Receipt.*)

I, *A.B.*, of, *&c.*, make oath and say that I know the above-named *C.D.*, *E.F.* and *G.H.*, and that they are [two of] the trustees for the time being, and the secretary of the above-named society, and that I saw them respectively sign and countersign the above receipt, in accordance with the rules of the said society for the time being in force, in token that all moneys due on the within-written mortgage had been paid.

Sworn, &c.

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